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Date: January 14, 2003

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Note: Transmittal Letter to Be Included with Reports.

Comments: _____

Rev'd, 11/22/04

Mr. Ken Bardo
U.S. EPA Region V
77 W. Jackson Blvd.
Chicago, IL 60604
November 19, 2004

Subject: Transfer of the Ownership of WKI Massillon, Ohio Facility to B&S Enterprises, LLC (as nominee from Industrial Assets Revitalization, Inc.)

Dear Mr. Bardo,


In accordance with Paragraph 11 of the Administrative Order on Consent, U.S. EPA Docket No. RCRA-05-2002-0010 (the "AOC"), World Kitchen, Inc. ("WKI") is providing this written notice to U.S. EPA that WKI is transferring the ownership of the Massillon, Ohio Facility to B&S Enterprises, LLC by the end of November, 2004.

WKI wishes to assure you that WKI will continue to comply with its obligations under the AOC and that transfer of ownership has been conditioned upon the agreement of the purchaser to comply with the obligations of WKI in paragraphs 21, 22, 23, 25, 30 and 33 of the AOC. See paragraph 4(b) of the attached Property Purchase Agreement. In addition, WKI, Wyeth (AHP) and B&S Enterprises are finalizing an agreement that covers the obligations of each party set forth in the AOC. We will forward that agreement to you once it has been finalized.

As provided by paragraph 13 of the AOC, this letter is also providing notice to U.S. EPA and AHP (now Wyeth) that Mr. Jim Rowlett of WKI will be the new Project Manager effective December 17th. He can be reached at 100 Eight Street, Charleroi, PA 15022, (724) 489-2288 and email: rowlettjm@worldkitchen.com.

If you have any questions, please feel free to contact me at (330) 830-5803.

Sincerely,



Jeffrey L. Burman
Project Manager
World Kitchen, Inc.
Massillon Facility

Enclosures

cc: Matthew Basso-Wyeth
Jim Rowlett - WKI



Baker's Secret

Chicago Cutlery

Corelle

CorningWare



EKCO

Magnalite

Olfa

Pyrex

Regent Sheffield

Revere



Visions

Wiltshire

Massillon Sale
Agreement

Wildman, Harrold, Allen & Dixon
225 West Wacker Drive
Chicago, Illinois 60606-1229
312-201-2000
312-201-2555 fax
www.wildmanharrold.com



Wildman Harrold
Attorneys and Counselors

Raim Murtishi
312-201-2894
Murtishi@wildmanharrold.com

October 6, 2004

VIA FEDERAL EXPRESS

Raymond J. Kulla
WKI Holding Company, Inc.
11911 Freedom Drive, Suite 600
Reston, Virginia 20190

Re: 359 State Avenue NW, Massillon, OH

Dear Ray:

Enclosed please find a fully executed Property Purchase Agreement, a Key Date Schedule and a Closing Checklist. In addition, I have enclosed a copy of the Strict Joint Order Escrow. We expect the Earnest Money to be wired into escrow today. Also, we will monitor all relevant dates and keep you apprised of any changes.

Very Truly Yours,

WILDMAN, HARROLD, ALLEN & DIXON LLP

Raim Murtishi

RM/maf/encls.

cc: Tony Caner (w/encl.)
Jeff Gray (w/o encl.)

PROPERTY PURCHASE AGREEMENT

This Property Purchase Agreement (this "Agreement") is made as of October 5, 2004 (the "Effective Date" when executed by Seller), by and between EKCO MANUFACTURING OF OHIO, INC., a Delaware corporation ("Seller"), and INDUSTRIAL ASSETS REVITALIZATION, INC., a California corporation d/b/a IA Machinery Company, or its nominee(s) ("Purchaser").

RECITALS

A. Seller owns approximately 23 acres of land improved primarily with single story industrial buildings containing a total of approximately 243,000 square feet, commonly known as 359 State Avenue NW, Massillon, Ohio, and legally described on Exhibit A attached to and made a part of this Agreement (together with all rights, easements and appurtenances thereto the "Parcel"), the personal property set forth on Exhibit B attached to and made a part of this Agreement (collectively, the "Personal Property") and all mechanical, HVAC, fire protection and security systems (such items, the Parcel and the Personal Property are sometimes collectively referred to in this Agreement as the "Property").

B. Seller desires to sell the Property to Purchaser, and Purchaser desires to purchase the Property on the terms stated herein.

C. Seller's affiliate, World Kitchen, Inc. ("WKI"), is a party to (i) an Administrative Order On Consent under U.S. E.P.A. Docket No. RCRA-05-2002-0010 (the "Order") with the United States Environmental Protection Agency and American Home Products, now known as Wyeth, Inc. ("Wyeth"), and (ii) an Agreement to Perform Corrective Action Responsibilities, dated August 5, 2002 (the "Wyeth Agreement"), with Wyeth. The Order and the Wyeth Agreement related to certain environmental matters at the Parcel.

IT IS THEREFORE HEREBY AGREED AS FOLLOWS:

1. Purchase Price: Earnest Money.

(a) Purchaser agrees to purchase the Property for (the "Purchase Price"), plus or minus prorations as set forth herein, on the terms set forth herein. On or before the expiration of the Inspection Period, the Purchase Price shall be allocated by written agreement of Buyer and Seller. In the event Buyer and Seller fail to agree to an allocation on or before the expiration of the Inspection Period, the allocation shall be as follows: to the Parcel; and to the Personal Property.

(b) Purchaser shall deliver to the Title Company (as defined below) by certified or cashier's check or wire transfer upon execution of this Agreement, to be held in escrow in an interest bearing account, pursuant to the provisions of this Agreement (such amount and all interest thereon hereinafter referred to as the "Earnest Money"). The balance of the Purchase Price shall be delivered on the Closing Date (as defined in Paragraph 3).

2. Conveyance and Title. Seller agrees to sell the Property at the price and on the terms set forth herein, and to convey or cause to be conveyed to Purchaser or its nominee(s) good and marketable fee simple title (and insurable as such) to the Parcel by a recordable special or limited warranty deed in form reasonably acceptable to Purchaser (the "Deed"), subject only to the matters set forth on Exhibit C (the "Permitted Exceptions"), and Purchaser is not assuming

any liability for any of Seller's debts, liabilities or obligations relating to the Property or otherwise. Seller hereby indemnifies, defends and holds harmless Purchaser (or its nominee), its affiliates and their respective officers, directors and shareholders from and against any loss, liability, claim, fine, penalty, demand, suit, expense, including without limitation, reasonable attorneys' fees, court costs and expert fees, settlement, obligations, damage or deficiency for the failure of Seller to discharge, perform or pay in full when due any of Seller's debts, liabilities or obligations relating to the Property or otherwise, whether accrued, absolute, contingent or otherwise due as of the Closing, or to become due after the Closing; provided, however, Seller's foregoing agreement shall not affect the provisions of Paragraph 4(a) or apply in any manner to any debts, liabilities or obligations relating to the Property's physical, environmental, soil or other condition except as provided in Paragraph 4(b).

3. Closing Date and Possession.

(a) The time of closing of the purchase and sale of the Property shall be on the 10th day following the expiration of the Inspection Period (as defined below), as the same may be extended by the terms and conditions of Paragraph 8(b) (the "Closing Date"), at the office of First American Title Insurance Company (the "Title Company"), in Chicago, Illinois, provided title to the Property is shown to be in accordance with the requirements hereof or is accepted by Purchaser and Seller has complied with the other preconditions to closing the transactions contemplated by this Agreement and set forth herein. At the closing of the purchase and sale of the Property, the net sale proceeds shall be paid to Seller.

(b) Sole and exclusive possession of the Property shall be delivered to Purchaser at closing upon funding.

4. "As Is" Condition of Property.

(a) Subject to Seller's obligations under Paragraph 4(b) and further subject to reasonable use, wear, tear and natural deterioration of the Property between the date hereof and the Closing Date and to any acts of Purchaser or its officers, employees, agents, contractors or consultants thereon, ~~Purchaser agrees to accept the Property "AS-IS, WHERE-IS" in its condition~~ on the date hereof and further agrees that Seller shall not be liable to Purchaser for any latent or patent defects in the Property. Other than those warranties set forth in Paragraph 11 of this Agreement, SELLER HEREBY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Notwithstanding the foregoing, Seller and Purchaser agree that (a) pursuant to Paragraph 14, Purchaser will be provided the opportunity to examine the Property and to become familiar with the physical, environmental, soil and other conditions thereof and to conduct such investigation of the Property as Purchaser considers appropriate, and (b) neither Seller nor any of the employees, agents or attorneys of Seller have made any verbal or written representations warranties, promises or guaranties whatsoever to Purchaser, whether express or implied, and, in particular, that no such representations, warranties, promises or guaranties have been made with respect to the physical, environmental, soil and other conditions or operation of the Property, the zoning and other laws, regulations and rules applicable to the Property or any part thereof or any other matter or thing affecting or related to the Property or the transactions contemplated hereby, except as, and solely to the extent, herein specifically set forth

in Paragraph 11 hereof. Purchaser hereby fully and irrevocably releases Seller and its agents and representatives from any and all claims it may now or hereafter acquire against Seller or its agents or representatives for any cost, loss, liability, expense, damage, action or cause or action arising from or relating to the environmental, soil or any other condition of the Property, except with respect to promises or undertakings contained herein that Seller has breached.

(b) Purchaser acknowledges that its use of the Property will have to comply with paragraphs 21, 22, 23, 25, 30 and 33 of the Order. In connection with the Order and the Wyeth Agreement, the Deed will contain a reservation of an easement to permit access to Wyeth and WKI as necessary to fulfill the terms of the Order and to Wyeth as necessary to fulfill its obligations under the Wyeth Agreement. On the condition that such access is provided to Wyeth and WKI, Seller agrees to be responsible for all of WKI's obligations under the Order and the Wyeth Agreement and to take all necessary action to cause Wyeth to perform its obligations under the Wyeth Agreement. Seller agrees to defend, indemnify and hold harmless Purchaser from all damage to persons or property resulting from Wyeth's and WKI's negligence or willful misconduct while on the Property after the closing to fulfill the terms and/or obligations of the Order and the Wyeth Agreement and WKI's performance of its obligations under the Order and the Wyeth Agreement. The obligations of Seller under this Paragraph 4(b) shall survive the termination of this Agreement.

5. Prorations, Costs and Utilities.

(a) At closing, current real estate taxes (based on actual taxes for 2003), personal property taxes, if any, imposed upon any part of the Property, assessments and other public governmental charges and, to the extent applicable, fuel, water, sewer and other utility charges (based on the most recent bills therefore) and other items customarily prorated in the State of Ohio, which have accrued to the Closing Date, shall be prorated to the Closing Date between the parties. The proration of 2004 real estate taxes by the parties at closing shall be a final settlement between the parties with respect to such real estate taxes. Purchaser shall pay for the cost of recording the Deed. All applicable deed taxes and real estate transfer and conveyance taxes, if any, shall be paid by Purchaser. Purchaser will solely responsible for all applicable sales, use and other taxes in connection with its purchase of the Property and promptly remit same to the proper agencies. Purchaser shall indemnify, defend and save Seller harmless from and against all sales, use and other tax obligations with regard to Purchaser's purchase of the Property.

(b) If consumption of water, sewer, electric and other utility charges for the Parcel is measured by meters, prior to the Closing Date Seller shall obtain a reading of each such meter and a final bill as of the Closing Date. If there is no such meter or if the bill for any of the foregoing has not been issued as of the Closing Date, despite Seller's commercially reasonable efforts to obtain such bill, the charges therefore shall be adjusted at the Closing Date on the basis of the charges for the prior period for which such bills were issued and shall be further adjusted between the parties when the bills for the correct period are issued. Seller and Purchaser shall cooperate to cause the transfer of utility accounts from Seller to Purchaser. Any utility security deposits to be refunded to Seller shall be obtained by Seller from the utility companies, and Purchaser shall make its own deposit with such companies. Notwithstanding the foregoing, Seller shall be responsible for all electricity charges incurred in order to fulfill its or Wyeth's obligations under the Order and the Wyeth Agreement. Purchaser agrees to provide Wyeth and

WKI with electricity service as necessary to comply with the Order. Purchaser shall submit to Seller within ten (10) days of Purchaser's receipt thereof, an invoice and documentation as to those electricity charges which are Seller's responsibility under this Paragraph, and Seller shall remit to Purchaser within thirty (30) days of Seller's receipt of such invoice and documentation the total charges due and owing hereunder. In the event that electricity service is not submetered for Wyeth's and WKI's use, Purchaser shall equitably allocate electricity charges based on the then current electricity use at the Property until submeters have been installed monitoring all electricity use by Wyeth and WKI. If Wyeth or WKI elects to obtain electricity directly from the utility, Purchaser will grant Wyeth, WKI or the utility with an appropriate easement on, over and under the Parcel.

(c) The provisions of this Paragraph 5 shall survive the closing of the transaction contemplated under this Agreement.

6. Closing Documents. At or prior to closing and as a condition of closing the purchase and sale contemplated herein:

(a) Seller shall deliver to Purchaser the following:

(i) The executed Deed for the Parcel subject to the Permitted Exceptions and an executed bill of sale for the Personal Property, each in customary form.

(ii) An executed closing statement (also to be executed by Purchaser).

(iii) An executed certificate in accordance with the provisions of Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code").

(iv) A certificate of Seller's Secretary or Assistant Secretary that all necessary corporate approvals of this Agreement and the transactions contemplated hereunder have been obtained.

(v) All original or other documents in Seller's possession pertaining to the Property, including, but not limited to, plans and specifications, operating manuals, keys, and maintenance records, it being understood and agreed that such items be delivered to Purchaser at the Parcel.

(ix) Such other documents as may be reasonably requested by Purchaser or the Title Company.

(b) Purchaser shall deliver to Seller the following:

(i) The balance of the Purchase Price after application of the Earnest Money, plus or minus prorations, by wire transfer.

(ii) An executed closing statement (also to be executed by Seller).

(iii) Certified corporate, partnership or limited liability company resolutions approving this Agreement or other similar authorization evidence, to

the extent applicable, and the transaction contemplated hereunder.

(iv) Such other documents as may be reasonably requested by Seller or the Title Company.

7. Survey. Seller has delivered to Purchaser a current ALTA/ACSM survey of the Parcel prepared by Cooper & Associates, LLP, which shall be the only survey. Seller shall be obligated to provide to Purchaser (the "Survey").

8. Title Insurance.

(a) Seller has delivered to Purchaser a commitment for title insurance as to the Parcel (the "Commitment") from the Title Company. Purchaser shall be solely responsible for the costs associated with the issuance of the Commitment and the cost of any policies (and any endorsements thereto) provided by the Title Company in connection with the Commitment. Provided such policy is available, the Title Company shall issue to Purchaser an Owner's Policy Form 1970B for the Purchase Price amount allocated to the Parcel as set forth in Paragraph 1(a) herein.

(b) If any update of the Commitment or the Survey discloses either exceptions or survey matters which are not Permitted Exceptions (collectively, the "Unpermitted Exceptions"), Purchaser shall notify Seller of its objection to any such Unpermitted Exception within 15 days of Purchaser's receipt of such updated Commitment and/or Survey. If the Closing Date is within 10 business days of such notice, the Closing Date shall be extended to a date, which is 10 days after receipt of such notice by Seller, provided Purchaser does not terminate this Agreement in accordance with the terms of subparagraph (d) below. Notwithstanding anything to the contrary set forth in this Agreement, any exceptions other than the Permitted Exceptions shown on the Commitment not identified by Purchaser as Unpermitted Exceptions in accordance with this subparagraph, shall be deemed to be Permitted Exceptions.

(c) Seller shall have 10 days after receipt of notice of an Unpermitted Exception objectionable to Purchaser to use its reasonable efforts to either: (i) cause the Unpermitted Exception to be removed or released or correct the survey defect; or (ii) have the Title Company undertake to insure against loss or damage that may be occasioned by the Unpermitted Exception, provided, however, that such an undertaking is reasonably acceptable to Purchaser. Seller shall not be obligated to expend more than an aggregate of \$10,000.00 under this subparagraph.

(d) If Seller does not cause the Unpermitted Exception(s) to be removed or released or to correct such survey defect(s) or cause the Title Company to undertake to insure against the same, provided, however, that such an undertaking is reasonably acceptable to Purchaser within said 10 day period specified in the immediately preceding subparagraph, Purchaser shall, at its option, by notice to Seller within three business days after the expiration of said 10 day period, (i) terminate this Agreement, or (ii) accept title to the Property, in its then condition with the right to deduct from the Purchase Price liens or encumbrances of a definite or ascertainable amount. In the absence of such notice to Seller within the stated time period, Purchaser shall be deemed to have waived its right to terminate this Agreement and shall accept title to the Property in its then condition, without the right to deduct from the Purchase Price for

such liens or encumbrances, provided that liens or encumbrances which may be discharged solely by the payment of money from Seller's proceeds at closing shall be so discharged.

(e) Upon Purchaser's election to terminate this Agreement with respect to the Property in accordance with the terms of subparagraph (d) above, this Agreement shall become null and void without further action of the parties and, in the event that Purchaser elects to terminate this Agreement, the Earnest Money shall be returned to Purchaser. Except for any indemnities made by the parties (which shall survive the termination of this Agreement as to the Property), following the distribution of the Earnest Money, if applicable (and Seller's reimbursement obligations as set forth in subparagraph (d) above), neither party shall have any further rights or obligations hereunder with respect to the Parcel, and Seller shall pay any costs for the Commitment.

9. Casualty. In the event that the Property or any portion thereof shall be materially damaged or destroyed by fire or other casualty prior to the Closing Date, Purchaser shall have the option to take an assignment of Seller's insurance proceeds (limited to the amount of the Purchase Price and specifically excluding any portion of such proceeds allocable to any fixtures, equipment, supplies and personal property owned by Seller and not subject to being conveyed to Purchaser under this Agreement) payable in connection with the loss or damage (without representation or warranty by or recourse to Seller with respect to such insurance proceeds) and proceed to close the transaction contemplated by this Agreement as to the Property in accordance with the terms of this Agreement. If the aforesaid option is not so exercised by Purchaser, Purchaser shall have the option, at its sole discretion and to be exercised by providing notice to Seller within 10 days of receipt of notice of the fire or other casualty, of terminating this Agreement, and in the event that this Agreement is terminated, the Earnest Money shall be returned to Purchaser, and Seller shall pay any costs for the Commitment.

10. Condemnation.

- (a) (i) In the event that the Property, or any portion thereof, shall be taken or proposed to be taken by eminent domain or condemnation prior to the Closing Date, Seller shall have the right to terminate this Agreement within 10 days after delivery to Purchaser of written notice of the commencement of such actual or proposed condemnation (the "Condemnation Notice"). Failure to so elect shall constitute Seller's election to proceed pursuant to clause (ii) below.
- (ii) If Seller fails to exercise its right to terminate this Agreement as set forth in Paragraph 10(a)(i) above, then Purchaser shall have the right, for an additional 10 days, to terminate this Agreement upon written notice to Seller. Failure to so elect shall constitute Purchaser's election to proceed pursuant to clause (iii) below.
- (iii) If neither Seller nor Purchaser exercises its right to terminate this Agreement as set forth in Paragraphs 10(a)(i) and 10(a)(ii) above, then Seller shall assign to Purchaser Seller's award payable in connection with the taking or condemnation of the Property or

portion thereof (without representation or warranty by or recourse to Seller with respect to such award and specifically excluding any portion of such award separately allocable to any fixtures, equipment, supplies and personal property owned by Seller and not subject to being conveyed to Purchaser under this Agreement) and Purchaser shall proceed to close the purchase of the Property in accordance with the terms of this Agreement on the later of (A) the Closing Date or (B) 20 days after Purchaser's receipt of the Condemnation Notice.

(b) In the event Purchaser fails to exercise its right to terminate this Agreement as set forth in Paragraph 10(a)(ii) above, Seller shall not adjust or settle any condemnation awards whatsoever without the prior written approval of Purchaser (which shall not be unreasonably withheld or delayed), and Purchaser and its counsel shall participate in all negotiations relating to any such condemnation awards. In the event that any litigation arises as a result of any such condemnation, Purchaser shall have the right to participate in and direct the course of any such litigation, at Purchaser's expense, and Seller shall reasonably cooperate in such litigation.

(c) In the event that this Agreement is terminated pursuant to this Section 10, the Earnest Money shall be returned to Purchaser, and Seller shall pay any costs for the Commitment.

11. **Seller's Representations and Warranties.** All representations and warranties of Seller (which, when a representation or warranty requires "knowledge" shall mean the knowledge of David Dietz, Plant Manager) set forth in this Agreement shall be true and correct as of the Closing Date. Seller hereby represents and warrants to Purchaser as to the following matters:

(a) Seller has full authority to execute and perform this Agreement and the instruments and documents referenced herein. Seller's execution and performance under this Agreement is pursuant to authority validly and duly conferred upon Seller and its signatories hereto. All requisite corporate action has been or will be taken by Seller and all requisite consents have been or will be obtained in connection with Seller entering into this Agreement and the instruments and documents referenced herein, and the consummation by Seller of the transactions contemplated hereby.

(b) Seller is a "United States Person" within the meaning of Section 1445(f)(3) of the Code.

(c) Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby shall result in a breach of, or constitute a default under, any agreement, document, instrument or other obligation to which Seller or WKI is a party or by which Seller or WKI may be bound and will not constitute a violation of any applicable law, rule, regulation, judgment, order or decree of any governmental entity or court to which Seller or WKI is subject.

(d) To the current actual knowledge of Seller, any service agreements with

respect to the Property are terminable upon not less than 30 days' advance notice, and Seller shall terminate such agreements prior to closing at Seller's expense.

(f) To the current actual knowledge of Seller, there is no claim, litigation, action or suit filed, pending or threatened against Seller and involving the Property before any federal, state, or local court or regulatory agency, or other governmental authority, except as expressly set forth herein and except for the Order and a notice from the Ohio Environmental Protection Agency of potential violation for paint line emissions.

12. **Purchaser's Representations and Warranties.** All representations and warranties of Purchaser set forth in this Agreement shall be true and correct as of the Closing Date and shall survive the Closing Date for a period of 12 months. Purchaser hereby represents and warrants to Seller as to the following matters: (a) Purchaser has full capacity and authority to execute and perform this Agreement; (b) Purchaser's execution and performance under this Agreement is pursuant to authority validly and duly conferred upon Purchaser and its signatories hereto; and (c) the transactions herein contemplated will not conflict with, or result in a breach under, any agreement or instrument by which Purchaser is bound, and will not constitute a violation of any applicable law, rule, regulation, judgment, order or decree of any governmental entity or court to which Purchaser is subject.

13. **Broker's or Finder's Fees.** Each party agrees that should some third party, other than Anthony Caner ("Caner") (Caner being the agent for Seller), claim a finder's fee or broker's commission as a result of the acts of either party hereto, the party upon whose acts the claim rests shall defend said claim and, if said claim is established, that party shall pay said claim. Each party agrees to indemnify and save harmless the other party against any liability arising from claims for finder's fees or broker's commissions as a result of its acts. Seller shall be solely responsible for any fee or commission due Caner as a result of the sale/purchase of the Parcel. The provisions of this Paragraph 13 shall survive the closing of the transactions contemplated under this Agreement.

14. **Inspection and Condition.**

(a) Seller hereby grants to Purchaser and its employees, agents, and representatives prior to the Closing Date, the right of access to the Property to inspect the Property and conduct such environmental, engineering and other tests and inspections as Purchaser may deem appropriate (the "**Investigation**"). Prior to Purchaser or any of Purchaser's contractors entering the Property, Purchaser shall deliver to Seller a schedule of Purchaser's entry time and its activities, and Purchaser shall provide to Seller written evidence of each contractor's workers compensation insurance in statutory amounts and liability insurance with limits of no less than \$500,000.00 per occurrence and \$1,000,000.00 in the aggregate. Under all such insurance policies, Seller shall be named as an additional insured. Such policies shall be placed with companies qualified to do business in Ohio. Purchaser agrees to defend, indemnify and hold harmless Seller from all loss, cost, and expense and liability Seller may suffer resulting from the entry onto the Property, the inspections or tests performed hereunder. Purchaser shall promptly repair any damage it or its contractors may cause to the Property. The obligations of Purchaser under Paragraph 14(a), (c) and (d) shall survive the termination of this Agreement.

(b) Within five days of the Effective Date (i) Seller shall deliver to Purchaser

copies of the existing title policy and existing plat of survey, and (ii) Seller will maintain and make available to Purchaser, for examination purposes during normal business hours at the Parcel, all other documents in the possession of Seller relating to the Property (including environmental and engineering reports, service contracts and documents pertaining to zoning, governmental permit status and the environmental condition of the Property, including, without limitation, the Order and the Wyeth Agreement) (collectively, the "Documents"). In addition, upon Purchaser's request, Seller shall direct Seller's environmental and other consultant(s) to cooperate (at such consultant's customary rates), at Purchaser's sole cost and expense, with the Investigation. Purchaser may make copies of the Documents provided for its use. Any copies made will be returned to Seller should this Agreement be terminated.

(c) If Purchaser does not notify Seller on or before 30 days from the Effective Date (the "Inspection Period") that Purchaser desires to proceed with the consummation of the transaction, then this Agreement shall terminate, and the Title Company shall pay the Earnest Money to Purchaser within five business days after the expiration of the Inspection Period. Upon such termination, Purchaser shall remain responsible for all costs related to its third party inspection fees, and Seller shall pay any costs for the Commitment. Notwithstanding anything to the contrary set forth in this Agreement, the obligation of the Title Company to return the Earnest Money to Purchaser shall be conditioned upon Purchaser delivering to Seller copies of all third-party reports regarding the Property which were prepared by, or on behalf of, Purchaser in connection with the Investigation as well as all reports, studies, surveys and other documents provided to Purchaser by Seller. If Purchaser does notify Seller on or before the expiration of the Inspection Period that Purchaser desires to proceed with the consummation of this transaction, then the Earnest Money shall be applied against the Purchase Price, and the balance of the Purchase Price, payable by wire transfer shall be delivered on the Closing Date.

(d) Purchaser agrees to keep confidential and to use reasonable efforts to cause its contractors, agents and representatives to keep confidential, and not in any manner, directly or indirectly (except as may be required by subpoena, court order or applicable law, provided prompt written notice of disclosure under such circumstances shall be given to the Seller), to disclose, in whole or in part, prior to the Closing Date any information it learns with respect to the Property (the "Confidential Information") to any person (except for persons who have a need to know the Confidential Information as part of Purchaser's due diligence inspection or the planning for Purchaser's development of the Property) or to use the Confidential Information in any way not directly related to Purchaser's due diligence in connection with the transaction contemplated by this Agreement or the planning for Purchaser's development of the Property. The Confidential Information shall not include information which Purchaser obtains or could obtain from sources other than Seller, which sources are not subject to any confidentiality obligations of which Seller have notified Purchaser.

15. Defaults: Remedies. In the event a party breaches any provision of this Agreement prior to the Closing Date, it shall have five days to cure such breach from the date of notice of such breach from the non-breaching party, and the following shall apply in the event of a non-cured breach prior to the Closing Date:

(a) If Seller breaches any provision of this Agreement, or any promise, warranty, or undertaking contained herein, and fails to cure such breach as provided herein, or engages in non-performance of any provision hereof, Purchaser shall be entitled as its sole

remedy to terminate this Agreement and receive the return of the Earnest Money, together with an amount equal to the Earnest Money as agreed-upon liquidated damages in full settlement of any and all claims arising under or in any way related to this Agreement. Purchaser irrevocably waives any and all right to pursue specific performance of this Agreement or any other legal or equitable remedy otherwise available to Purchaser not otherwise specifically provided for herein, and in no event shall Seller be liable for any punitive or consequential damages hereunder; provided, however, that in the event Seller's default results from an intentional, willful failure or refusal to comply with the terms of this Agreement, Purchaser shall be entitled to pursue all remedies otherwise available at law or in equity. Both Seller and Purchaser acknowledge and agree that the foregoing provisions are reasonable in light of the intent of the parties and the circumstances surrounding the execution of this Agreement, and the parties hereto hereby expressly agree that their respective rights and remedies shall be limited as herein above set forth. In the event of a termination pursuant to this Paragraph, Seller shall pay any costs for the Commitment.

(b) If Purchaser breaches any provision of this Agreement, or any promise, warranty or undertaking contained herein, and after five days written notice (the "Default Notice") from Seller to Purchaser, Purchaser fails to cure such breach as provided herein or contest the default set forth in the Default Notice, Seller shall, as its sole and exclusive remedy, have the unilateral right to direct the Title Company to deliver the Earnest Money to Seller. Seller shall retain the Earnest Money as liquidated damages. Seller irrevocably waives any and all right to pursue specific performance of this Agreement or any other legal or equitable remedy otherwise available to Seller not otherwise specifically provided for herein, and in no event shall Purchaser be liable for any punitive or consequential damages hereunder; provided, however, that in the event Purchaser's default results from an intentional, willful failure or refusal to comply with the terms of this Agreement, Seller shall be entitled to pursue all remedies otherwise available at law or in equity. Both Seller and Purchaser acknowledge and agree that the foregoing provisions are reasonable in light of the intent of the parties and the circumstances surrounding the execution of this Agreement and the parties hereto hereby expressly agree that their respective rights and remedies shall be limited as herein above set forth. Such retention shall not affect any terms of this Agreement that are deemed to survive any termination of this Agreement.

16. **Additional Covenants of Seller.** From the date of this Agreement until the Closing Date, Seller shall (a) maintain the Property in the same order and repair as currently maintained by Seller; and (b) promptly forward to Purchaser any material notices pertaining to the Property received by Seller, including, without limitation, notices received from any governmental authority having jurisdiction over the Property.

17. **Miscellaneous.**

(a) **Expenses.** Purchaser and Seller shall each pay their respective attorneys' fees. Except as otherwise herein provided, any fee, cost, charge or expense incurred by either party hereto or for which either party hereto may be liable in connection with the negotiation, examination and consummation of this Agreement, shall be paid by the party hereto incurring, or liable for, such fee, cost, charge or expense. Purchaser and Seller shall split escrow fees equally.

(b) **Further Assurances.** Purchaser and Seller each agree to execute

promptly on demand without additional consideration therefore and deliver to the other such further documents or instruments as may be reasonable and necessary in furtherance of the performance of the terms, covenants and conditions of this Agreement. This provision shall survive the Closing.

(c) Complete Agreement. This Agreement contains all of the agreements of the parties hereto with respect to the subject matter hereof and no prior agreement or understanding, oral or written, pertaining to any such matters shall be effective for any purpose.

(d) Time of Essence. Time is of the essence of this Agreement.

(e) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns, provided that Purchaser may assign its rights hereunder upon prior written notice to Seller. Notwithstanding any assignment by Purchaser, Purchaser shall remain liable for the performance of all of the obligations of Purchaser under this Agreement.

(f) Counterparts. This Agreement may be executed in any number of identical counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

(g) Captions. The captions used in this Agreement are for convenience only and are not a part of this Agreement and do not in any way limit, amplify or explain any of the provisions of this Agreement.

(h) Notices. All notices required or permitted under this Agreement shall be in writing and mailed, delivered or transmitted, by one party to the other at the following addresses:

If to Purchaser: INDUSTRIAL ASSETS REVITALIZATION, INC.
11426 Ventura Boulevard
2nd Floor
Studio City, California 91604
Attention: Brian Holland
Telecopier No.: (818) 508-3025

With a copy to: Buckley King LPA
1400 Fifth Third Center
600 Superior Avenue, East
Cleveland, Ohio 44114
Attention: Deborah D. Zielinski
Telecopier No.: (216) 579-1020

If to Seller: EKCO MANUFACTURING OF OHIO, INC.
c/o World Kitchen, Inc.
11911 Freedom Drive, Suite 600
Reston, Virginia 20190
Attention: Raymond J. Kulla
Telecopier No.: (703) 456-4760

With a copy to: Wildman, Harrold, Allen & Dixon LLP
225 West Wacker Drive, Suite 2800
Chicago, Illinois 60606-1229
Attention: Jeffrey P. Gray
Telecopier No.: (312) 201-2555

and each such notice shall be deemed effective and given (i) upon receipt if personally delivered, (ii) upon being transmitted if sent by telegram, telex or telecopy, (iii) at 5:00 p.m. three days after deposit in the United States mail, if sent by certified or registered mail with postage prepaid, return receipt requested, or (iv) upon receipt if sent in any other way. Any party hereto may from time to time, by written notice to the other, designate a different address for notices. All notices sent via telecopier shall be deemed effectively given upon successful completion of transmission as evidenced by a confirmation generated by the sender's telecopier machine. All notices may be given on behalf of a party by its legal counsel.

(i) Applicable Law. This Agreement and all amendments hereof shall be governed by and construed in accordance with the laws of the State of Ohio, applicable to contracts made and to be performed therein.

(j) Severability. If any provision of this Agreement is invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted. The remainder of this Agreement shall be valid and enforceable to the maximum extent possible.

(k) Confidentiality. All information learned by Purchaser or Seller or its respective agents under this Agreement (including, without limitation, the results of the Investigation) shall be kept confidential by the parties hereto to the extent it is commercially reasonable to do so and their respective agents, and shall not be used by the parties hereto or their respective agents otherwise than as herein contemplated. Such obligation as to confidentiality and "no-use" shall survive the termination of this Agreement.

(l) No Recording. Neither party shall record this Agreement or any memorandum hereof.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

EKCO MANUFACTURING OF OHIO, INC.

INDUSTRIAL ASSETS
REVITALIZATION, INC.

By: 

Its: VIP

By: _____

Its: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

EKCO MANUFACTURING OF OHIO, INC.

INDUSTRIAL
REVITALIZATION, INC.

ASSETS

By: _____

Its: _____

Raymond J. Della
VP

By: _____

Its: _____

[Signature]
[Signature]

EXHIBIT A

Legal Description of Parcel

(See Attached)

EXHIBIT A**LEGAL DESCRIPTION****Tract 1**

Situated in the City of Massillon, County of Stark, State of Ohio, and known as and being Out Lot 81, containing 17.57 acres, as recorded in Schedule No. 3, page 494 of Stark County Records.

Tract 2

Situated in the City of Massillon, County of Stark, State of Ohio, and known as and being Lots No. 9730, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2650, 2651, 10532 and 10533, according to the present numbering of the lots in said City.

C.K.A: 359 State Avenue NW, Massilon, Ohio

EXHIBIT B

Personal Property

(See Attached)

Massillon Inclusion List - 9/22/04

118363	Waxer, Model 702			
118364	Press, Shop Made, Hydraulic			
118404	Die Lift, 2000 lb Capacity, Hand Crank Type			
118430	Sweeper, Riding Type, Model 255 Series II			
118474	Waxer, Model 702 RH			
118483	Press, OBI, Capacity 75 Ton			
118488	Press, OBI, 60 Ton			
118497	Press, OBI, #28			
118515	Press, OBI, Type 110 ton obi			
118546	Press, OBI, 90Ton			
118557	Press, OBI, Model 28, 90 Ton Capacity			
118585	Waxer, Model 702			
118603	SPARE GUSHER VERT. PUMP-AQUEOUS DEGREASER			
118604	REPL. 480 V SWITCHGEAR ASSM.			
118605	ELECTRICAL UPGRADE 480V SWITCHGEAR			
118621	Land			
118623	Plasma Welder, Model PCM 1000i			
118624	Welder, Model Dialarc HF-P, W/ 1 Radiator Cooling			
118625	Band Saw, Horizontal, Model C-916"			
118626	Shear, Model H 1852, Capacity 16 Gauge			
118628	Michigan Monorail Curling Oven (South)			
118629	Forklift, #6000, Model 52-8FGU430			
118630	Michigan Monorail Curling Oven FV Adjustment			
118633	Welder, Model DC 400 W/ Attachments			
118635	Parts Washer-Degreaser, Model RT 48 M, 29" x 48			
118636	Drill 21" x 26" Table, Capacity 26"			
118638	Radial Drill, 3' Arm x 9" Column			
118640	Air Compressor, Vertical, Est. 3 Horesepower			
118643	Waxer, Model 702			
118644	Lathe, Model 14"C, Swing 16 1/2" x 54" cc			
118645	Lathe, Model 18"BB, Swing 20 1/2" x 72" cc			
118648	Lathe, 11" Swing x 50" Bed			
118649	Gas Furnace, Model 120			
118685	Air Compressor System, Incl. 2 Sullair Compressor			
118696	Press System, Model PN-250-144-48 W/ Attachments			
118697	Bridgecrane, Double Girder, 10 Ton, W/ Craneway			
118701	Digital Message Board, 48" Long			
118712	Feeder, Model 300 RP, "Cambot"			
118718	482 TRANSFER BAR SET			
118743	BLOCK UP WALL IN MAINTENANCE AREA			
118784	Pallet Pal			
118786	Balance Scale, Model HF 3000			
118787	Exhaust System			
118788	Press System, Model C-110 W/ Attachments			
118790	Misc. Lab Equipment: 1 Safety Cabinet			
118791	Misc. Lab Equipment: 1 Base Counter			
118793	Composite Sampler, Model 7578-10			
118794	Minor F & E: 1 Work Table			
118795	Minor F & E: 1 Work Table			
118796	Misc. Lab Equipment: 1 Safety Cabinet			
118799	Vacuum Feeder, "Cambot", Model 500 RPP.90H32-1.			
118800	Furnace 26' x 36' x 30" High			
118801	Misc. Lab Equipment: 1 Hood, 9' Long			
118802	Misc. Lab Equipment: 1 Viscometer			
118803	Coil Upender (60" x 60")			

118804	Die Lift, Model ADM-20-50, 2000 lb. Capacity			
118805	Packaging Line Incl. Components			
118809	Packaging Line Incl. Components			
118810	Surface Grinder, Model FSG-1632 AD W/ Digital Readout			
118811	Drill Sharpener, 1/3 Horsepower			
118812	Surface Block, 4' x 3' x 7'			
118813	Packaging Line Incl. Components			
118814	Packaging Line Incl. Components			
118815	Packaging Line Incl. Components			
118817	Stretch Wrap System W/ Several Components			
118819	Scale, 4' x 4' Platform W/Brechbuhler Remote Dig			
118820	Stretchwrapper, 6' x 8'			
118821	Air Compressor, Duplex, Model 44T, Est. 10 Horsepower			
118822	Press, Model 150 OBG			
118823	Belt Conveyor, 18" x 22'			
118824	Punch Press, Model 3, Est. 3 Ton			
118825	Riveters			
118826	Riveters			
118827	Belt Conveyor, 12" x 10'			
118828	Blade Machine W/ Nilson Model 51B Decoiler			
118832	Adjustable Case Sealer			
118833	Adjustable Case Sealer			
118836	D-20-ADT Bostitch Air Stapler			
118837	D-20-ADT Bostitch Air Stapler			
118838	D-20-ADT Bostitch Air Stapler			
118844	Case Sealer Mod 12A S/N 78-8059-5869-9			
118846	Label Dispenser LG-31 Semi Auto			
118850	Case Sealer 3M 200A Model 29200 S/N 3052			
118854	Press System, 200 Ton Capacity W/ Attachments			
118855	Minor F & E: 1 Dishwasher			
118857	Minor F & E: 1 Mixer			
118858	Minor F & E: 1 Microwave			
118859	Press System, Model 250-B2-144 W/ Attachments			
118861	Minor F & E: 1 Cart			
118862	Press System, Model C-110 W/ Attachments			
118863	Minor F & E: 1 Work Table			
118864	Minor F & E: 1 Work Table			
118865	Minor F & E: 1 Work Table			
118867	Minor F & E: 1 Gas Oven			
118868	Air Stripper, Est. 5' x 43' High, 30 HP W			
118870	13 Level Loaders, "Pallet Pals"			
118874	Tank, by South Mixer Area, Est. 8' Diameter x 12			
118875	Group of Minor F, F&E			
118876	Bulk Storage Racks, Consisting of Approx 923 Sec			
118877	Cantilever Storage Racks, 2 1/2' x 8' x 10' High			
118879	Air Handler for Coaling Area			
118880	Air Handler for Coaling Area			
118881	Bench Hack Saw, 10"			
118882	Pres System, Model S2-200-144-30 W/ Attachments			
118884	12" Diameter Bench Sander			
118885	Surface Block 2' x 3' x 4"			
118886	Die Cart Lift, #3 W/ Hand Crank			
118888	Crane, Column Mount, 18" x 20', W/ 6 1 Tone Manu			
118889	Crane, Column Mount, 18" x 20', W/ 6 1 Tone Manu			
118890	Crane, Column Mount, 18" x 20', W/ 6 1 Tone Manu			
118891	Crane, Est. 12' High, 3 Ton Capacity W/ Electric			
118892	Pedestal Grinder, 1/2 Horsepower			

118893	Crank Die Cart			
118895	Brake, Manual, 8' Wide			
118896	Press, H Frame, Est. 75 Ton			
118897	Pedestal Grinder, 1 3/4 Horsepower, 6"			
118898	12" Disc Sander			
118900	Waxer, Model 702			
118901	Die Cart, #2, Hand Crank			
118903	Rotary Table			
118904	Rotary Table			
118905	Rotary Table			
118908	Surface Grinder, Model #2, 6" x 10"			
118909	Surface Grinder, 8" x 24" Chuck			
118910	Rotary Surface Grinder, Model 1, 30" Diameter W/			
118911	Lift			
118912	Waxer, Model 702			
118914	Air Compressor System			
118916	Surface Grinder, Cat#61-5833, 5" X 10" B & S M			
118917	Surface Grinder, 10" x 24" Walker Magnetic Chuck			
118918	Surface Grinder 14" x 48" Chuck			
118920	Milling Machine, 9" x 42" Table, 2 Horsepower			
118921	Milling Machine, 9" x 42" Table, 1 1/2 Horsepower			
118922	Crane Column Mount, 18" x 20', W 6 1 Tone Manu			
118923	Waxer, Model 702 RH			
118924	Crane Column Mount, 18" x 20', W 6 1 Tone Manu			
118925	Crane Column Mount, 18" x 20', W 6 1 Tone Manu			
118926	Milling Machine, Model FTV-4, 11" x 58" Table W/			
118927	Milling Machine, Horizontal, Model #3, 15 1/2"			
118928	Sandblast Cabinet, Model 101, 20" x 36" x 22"			
118929	Press, H Frame, Hand Hydraulic, Est 75 Ton			
118930	Band Saw, Model 2013V, W/ Welder Grinder			
118931	Milling Machine, 9" x 42" Table, 2 Horsepower			
118933	Mixing Tank, 3' Diameter x 3', W/ Pump & Air Agit			
118933	Mixing Tank, 3' Diameter x 3', W/ Pump & Air Agit			
118934	Deionized System, w/ 8 Fiberglass Tanks, 12" x 4'			
118935	Deionized System, w/ 8 Fiberglass Tanks, 12" x 4'			
118936	Barrel Buggy, Hydraulic			
118939	Tank, 4' Diameter x 64", W/ Pump, 1", 1 Horsepower			
118940	2 Press Systems, Model BN-110 W/ Attachments			
118941	Mixing Tank, 3' x 3' W/ Air Agitators			
118942	Mixing Tank, 3' x 3' W/ Air Agitators			
118943	Air Agitators, Qty. 11, For Barrels			
118944	Tank, 4' Diameter x 64", W/ Pump, 1", 1 Horsepower			
118945	Tank, 4' Diameter x 64", W/ Pump, 1", 1 Horsepower			
118948	Press, Model E150, W/ Controls			
118951	Shop Crane, Portable			
118954	Conveyor & Pan Stacker			
118955	Air Compressor, Model Rollair 150 W/ Arrow Air DR			
118956	Vertical Machining Center, CNC, Model 4, W/ Wilkers			
118957	Milling Machine, CNC, Model Hawk 5D, W/ Wilkerson			
118958	Grinder 12" Diameter Face, W/ Digital Readout &			
118959	Drill, Model 2F 15, 24" x 24" Table			
118961	Pipe Threader, Model 654			
118962	Pipe Threader, Model 535 W/ Cart			
118963	Coating Line @ South End W/ Several Components			
118964	Coating Line @ South End W/ Several Components			
118966	Crane, 4000 lb Capacity, Single Girder, 42' Span			
118967	Shear 48"			

118969	Press, Greenerd, #5S			
118970	Stretch Wrapper, V Series, 72" Diameter			
118971	Parts Washer, Model RT-48 H			
118972	Overhead Conveyor Line, @ North End, App. 1000			
118973	Overhead Conveyor Line, @ North End, App. 1000 L			
118974	Washer/Dryer W/ Texas Systems Controls, 3 Stage			
118975	Washer/Dryer W/ Texas Systems Controls, 3 Stage			
118976	Desiccant Air Dryer, 10" Diameter x 54" W/ Aut			
118977	Desiccant Air Dryer, 10" Diameter x 54" W/ Aut			
118978	Coating Line @ North End W/ Several Components			
118979	Coating Line @ South End W/ Several Components			
118980	Overhead Conveyor Line, @ North End, App. 1000			
118982	Overhead Conveyor Line, @ North End, App. 1000			
118983	Overhead Conveyor Line, @ North End, App. 1000			
118984	Coating Line @ North End W/ Several Components			
118985	Press, Model SC2-100-60-30 W/ Attachments			
119010	Slitter, 40" Wide, W/ Stand			
119014	Press, Model BP2-100-60-30, W/ Attachments			
119025	Press System, Model SC-200-60-48			
119026	Die Lift, Model PD4-20-60			
119028	Labeller, Model Z142			
119040	Press, OBI, W/ Pan Feed			
119044	Building Improvements			
119051	Press, Model OGP-50 W/ Pan Feed			
119052	WEST NIAGARA PRESS PARTS			
119073	Press, Estimated 40 Ton, W/ Attachments			
119080	Building: 359 State Avenue, Massillon, Ohio			
119081	Press, OBI, Model 7 1/2, W/ Attachments			
119084	Press, OBI, Model 7 1/2, W/ Attachments			
119090	Hot Melt Glue Appl. Mod 3400 w/Pattern Control			
119093	Press, Model BN-110 OBS W/ Attachments			
119098	Press System, Model SC2-200-60-48, W/ Attachments			
119097	3M Case Sealer Mod 200 A #1			
119098	3M Case Sealer Mod 200 A #2			
119101	3M MPD 700 Adj. Case Sealer S/N 5263			
119102	Lift Truck, Model 5FCU15"			
119103	Lift Truck, Model 2FBCA15			
119104	Press, Model BN-110 OBS W/ Attachments			
119105	Lift Truck, Model 5FCU15"			
119106	Lift Truck, Model 5FCU15"			
119107	Lift Truck, Model 5FGC30G807			
119111	Stretch Wrapper Lantech Mod Q300 Semi-Auto			
119112	Lift Truck, Model GCS 15			
119113	Lift Truck, Model GCS 12			
119114	Lift Truck, Model 5FGC30-VA410			
119116	Lift Truck, Model NP-300-30			
119118	Lift Truck, Model C 20 B			
119120	Lift Truck, Model C500-30			
119123	Hytrol Conveyor #1 Model TA			
119124	Flowmaster 18" Conveyor			
119125	Press System, Model PN-250-144-48 W/ Attachments			
119126	Hot Melt Glue Applicator Mod 3400-1EA32/D			
119127	Hot Melt Glue Applicator Mod 3400-1EA32/D			
119128	Lift Truck, Model GCS 25 MB			
119129	Hytrol Belt Conveyor #2 Model TA			
119131	Hytrol Belt Conveyor TA			
119132	3M Case Sealer Mod 200 A #3			

119133	3M Case Sealer Mod 200 A #4			
119134	Lift Truck, Model NP 12D			
119135	Lift Truck, Model NP 500-25D			
119136	Waxer, Series 702			
119137	Press System, Model PN-250-144-48			
119138	Lift Truck, Model C500-120			
119140	Lift Truck, Model B-30E			
119151	Scissor Lift, 3' x 4', Hydraulic			
119159	Scissor Lift, 3' x 4', Hydraulic			
119162	Scissor Lift, 3' x 4', Hydraulic			
119167	Scissor Lift, 3' x 4', Hydraulic			
119172	Conf. Rm. F & E: 20 Arm Chrs., 1 Chk. Bd., 1 Wrtn			
119174	Lift Truck, Model 252-66FGCU30			
119175	Lift Truck, Model CGC55			
119176	Lift Truck, Model 252-66FGCU30			
119192	Scissor Lift, 3' x 4', Hydraulic			
119868	Aurora Pit Pump			
119875	Longbed Transfer Unit OMT04668			
119876	8 Link Lite Blk MAX Light Curtains LLMAX30AS			
120331	Anilam Digital Readout Lagun Mill Machine			
120332	GMA Wire Feeder K440-2LN7			
120335	Conveyor Sys. Mod. HNC S/N MCL00114			
120336	Conveyor Sys. Mod. HNC S/N MCL00114 #2			
120337	Conveyor Sys. Mod. HNC S/N MCL00114 #3			
120338	Conveyor Sys. Mod. HNC S/N MCL00114 #4			
120339	Conveyor Sys. Mod. HNC S/N MCL00114 #5			
120353	Graco Pro Electrostatic Spray Guns 1 of 2			
120354	Graco Pro Electrostatic Spray Guns 2 of 2			
120355	Control Cabinet for Graco Spray Guns			
120388	Lab/Q.C. Office Adjacent to Lab 2nd Floor			
120392	Jaybird Air Feeder J9-1212 [Used] L-R			
120833	M95 Longbed Master Die Set			
120834	M310 Longbed Master Die Set			
120835	M319 Longbed Master Die Set			
120836	M160 Longbed Master Die Set			
121143	YALE FORKLIFT TRUCK			

[illegible]

Press Specs

Clutch Type	Brake Type	Counterbalance	Manufacturer	Model Number	Serial Number	Options
Full Revolution Air Friction	Air Releasing Disc Brake, Air Operated Flywheel Brake	Air	Magnum	8P2-440-20-32	3222	
Full Revolution Air Friction	Air Releasing Disc Brake, Air Operated Flywheel Brake	Air	Magnum	8P2-440-20-32	4454	
		Air	Magnum	8P-110-085	P53467	
		Air	Magnum	8P-110-085	P53468	
		Air	Magnum	8P-110T	P54273	
		Air	Magnum	8P-110T	P54312	
Full Revolution Air Friction	Air Releasing Disc Brake, Air Operated Flywheel Brake	Air	Magnum	1C2-280-40-42	P54140	Link Model 501
Full Revolution Air Friction	Air Releasing Disc Brake, Air Operated Flywheel Brake	Air	Magnum	1C2-300-40-42	P57738	Link Model 501
		Air	Magnum	200-40-114	25-467	
		Air	Magnum	PM 220-144-42	22138	
Full Revolution Air Friction	Air Releasing Disc Brake, Air Operated Flywheel Brake	Air	Magnum	PM 220-144-42	82204	Link Model 501
Full Revolution Air Friction	Air Releasing Disc Brake, Air Operated Flywheel Brake	Air	Magnum	PM 220-144-42	P53154	
Full Revolution Single Disc Friction		Air	Magnum	E-130	50242	
Full Revolution Single Disc Friction		Air	Magnum	C-150	H54472	
		Air	Magnum	C-110	H47713	
		Air	Magnum	26-081	H47740	
		Air	Magnum	7-12-081	8718	
		Air	Magnum	7-12-081	5718	
		Air	Magnum	8P-110T	80205	
		Air	Magnum	26-081	P54140	
		Air	Magnum	26-081	H54740	
		Air	Magnum	26-081	H53142	
		Air	Magnum	200-144-42	8P2463	
		Air	Magnum	130-081	27811	
		Air	Magnum	190-081	1180002174	
		Air	Magnum	73	34-18133-P	
		Air	Magnum	Single Control	53-360	

[illegible]

Uncoil Equipment

[illegible]

Attachments

Conveyor Equipment

Description

Condition

Picture

(7) Incline Encasveyor Scrap Conveyor Steel Chain Link Belt, (1) Exit Belt of Automated Stacker

Fair Inq0001UphN Scrap Conveyor.JPG

(7) Incline Encasveyor Scrap Conveyor Steel Chain Link Belt, (1) Exit Belt of Automated Stacker

Fair Inq0001UphN Scrap Conveyor.JPG

(1) Rubber Exit Belt of Automated Stacker

Fair Inq0001UphN Scrap Conveyor.JPG

(1) Rubber Exit Belt of Automated Stacker

Fair Inq0001UphN Scrap Conveyor.JPG

(1) Incline Encasveyor Scrap Conveyor Steel Chain Link Belt, (1) Straight Encasveyor Steel Chain Link Belt, (1) Exit Belt of Automated Stacker

Fair Inq0001UphN Scrap Conveyor.JPG

(1) Incline Encasveyor Scrap Conveyor Steel Chain Link Belt, (1) Straight Encasveyor Steel Chain Link Belt, (1) Exit Belt of Automated Stacker

Fair Inq0001UphN Scrap Conveyor.JPG

(1) Incline Encasveyor Scrap Conveyor Steel Chain Link Belt, (1) Straight Encasveyor Steel Chain Link Belt, (1) Exit Belt of Automated Stacker

Fair Inq0001UphN Scrap Conveyor.JPG

(2) Incline Encasveyor Scrap Conveyor Steel Chain Link Belt, (1) Exit Belt of Automated Stacker

Fair Inq0001UphN Scrap Conveyor.JPG

Lift Table Equipment

Part	Model	Capacity	Condition
118151	Schmeer LK 2 x 4, Hydraulic	3500	Good
118152	Schmeer LK 2 x 4, Hydraulic	3500	Needs Repair - Good
118153	Schmeer LK 2 x 4, Hydraulic	3500	Good
118154	Schmeer LK 2 x 4, Hydraulic	3500	Good

118157	Schmeer LK 2 x 4, Hydraulic	3500	Needs Repair
--------	-----------------------------	------	--------------

Misc Support

11/17/96 Vacuum Food at "Chester", Model 505 RPP, 90-00-1, Good

EXHIBIT C

Permitted Exceptions

(See Attached)

EXHIBIT C**PERMITTED EXCEPTIONS**

1. Taxes or assessments approved, levied or enacted by the State, County, Municipality, Township or similar taxing authority, but not yet certified to the tax duplicate of the County in which the land is situated, including but not limited to any retroactive increases in taxes or assessments resulting from any retroactive increase in the valuation of the land by the State, County, Municipality, Township, or other taxing authority.
 2. Declaration of Restrictions, filed for record December 30, 2002 and recorded as Stark County Imaging Document No. 200212300106953, as to Tract 1.
 3. Right of Way to Massillon Water Supply Co., recorded in Volume 455, Page 35 of Stark County Records.
 4. Easement to The Ohio Water Service Company, recorded in Volume 1241, Page 553 of Stark County Records.
 5. Reservation for Easement to United States of America, recorded in Volume 1423, Page 515 of Stark County Records.
 6. Easement to United States of America, recorded in Volume 1437, Page 289 of Stark County Records.
 7. Reservation contained in the Deed, recorded in Volume 1857, Page 616 of Stark County Records.
-
8. Easement to Ohio Edison Company, recorded in Volume 3798, Page 338 of Stark County Records.
 9. Easement to Ohio Edison Company, recorded in Volume 3798, Page 360 of Stark County Records.
 10. Consent to main and operate wells, recorded in Volume 1485, Page 13 of Stark County Records.
 11. Rights of upper and lower and abutting riparian owners and of the State of Ohio and the County of Stark and the public generally in and to the waters of Newman's Creek and to the uninterrupted natural flow thereof free of pollution from insured premises and subject to the possibilities of accretion or avulsion which might change boundaries established by said Newman's Creek.



KEY DATE SCHEDULE**SELLER:** EKCO MANUFACTURING OF OHIO, INC.**PURCHASER:** INDUSTRIAL ASSETS REVITALIZATION, INC.**EFFECTIVE DATE
OF CONTRACT:** October 5, 2004**PROPERTY:** Approximately 23 acres of land improved with a single-story industrial building.
Approximately 243,000 square feet, commonly known as 359 State Avenue NW,
Massillon, OH.**PRICE:** \$1,400,000.00
(\$1,200,000 allocated to personal property / \$200,000 allocated to parcel)

DATE	ACTION	RESPONSIBILITY	REFERENCE	STATUS
October 5, 2004	Purchaser to deposit \$70,000 in Earnest Money with First American Title Company.	Purchaser	¶ 1(b)	
October 11, 2004	Delivery of existing title policy and existing survey. --Purchaser has 15 days to notify Seller of any objections to title and survey.	Seller	¶ 14(b) ¶ 8(b) ¶ 8(c)	
November 04, 2004	Last day of Inspection Period.	Purchaser	¶ 14(c)	
November 14, 2004	Closing Date	Purchaser/Seller	¶ 3(a)	

CLOSING CHECKLIST

SELLER: EKCO Manufacturing of Ohio, Inc.
PURCHASER: Industrial Assets Revitalization, Inc.
PROPERTY: 359 State Avenue NW, Massillon, Ohio
PURCHASE PRICE: \$1,400,000.00
(\$1,200,000 allocated to personal property / \$200,000 allocated to parcel)

	<u>Responsibility</u>	<u>Status</u>
1. Purchase Agreement	S/P	Exchanged
2. Title Commitment and underlying documents	S	Exchanged
3. ALTA Survey	S	_____
4. Owner's Title Insurance Policy (Form 1970B)	P	_____
5. Closing Escrow Instructions	S/P	_____
6. Closing Statement	S/P	_____
7. Special Warranty Deed	S	_____
8. Bill of Sale	S	_____
9. GAP Undertaking	S	_____
<hr/>		
10. ALTA Statement	S	_____
11. FIRPTA Affidavit	S	_____
12. Owner's Affidavit	S	_____
13. Assistant Secretary's Certificate	S	_____
14. Certificate of Good Standing - Delaware	S	_____
15. Corporate Resolutions approving Agreement	P	_____



FIRST AMERICAN TITLE INSURANCE COMPANY
National Commercial Services
30 North LaSalle Street, Suite 310, Chicago, Illinois 60602
(312) 553-0471 (800) 333-3993 (Fax) 553-0480

Escrow Number: _____

Date: October 5, 2004

STRICT JOINT ORDER ESCROW

Property Address: 359 State Avenue NW
Massillon, Ohio

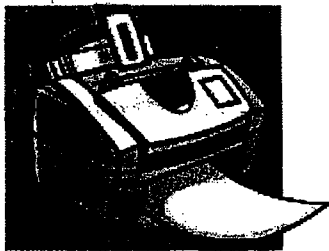
Deposit(s):

Certified cashier check(s) or wire(s) in the amount of Seventy Thousand and 00/100 Dollars (\$70,000.00) is hereby deposited with First American Title Insurance Company, as Escrowee ("ESCROWEE") into this Strict Joint Order Escrow ("Agreement") and shall be released and delivered by Escrowee only upon the joint written order of the undersigned or their respective legal representatives or assigns.

ESCROWEE, is hereby expressly authorized to disregard, in its sole discretion, any and all unilateral notices or warnings given by any of the parties hereto, or by any other person or corporation, but said ESCROWEE is hereby expressly authorized to regard and to comply with and obey any and all orders, judgments or decrees entered or issued by any court with or without jurisdiction, and in case the said ESCROWEE obeys or complies with any such order, judgment or decree of any court it shall not be liable to any of the parties hereto or any other person, firm or corporation by reason of such compliance, notwithstanding any such order, judgment or decree being entered without jurisdiction or being subsequently reversed, modified, annulled, set aside or vacated. In case of any suit or proceeding regarding this escrow, to which said ESCROWEE is or may at any time become a party, it shall have a lien on the contents hereof for any and all costs, and reasonable attorneys' fees, whether such attorneys shall be regularly retained or specially employed, and any other expenses which it may have incurred or become liable for on account thereof, and it shall be entitled to reimburse itself therefore out of said deposit, and the undersigned jointly and severally agree to pay said ESCROWEE upon demand all such costs, fees and expenses so incurred, to the extent the funds deposited hereunder shall be insufficient to allow for such reimbursement.

In no case shall the above mentioned deposits be surrendered except on an order signed by the parties hereto, their respective legal representatives or assigns, or in obedience of the process or order of court as aforesaid.

Deposits made pursuant to these instructions may be invested on behalf of any party or parties thereto: Provided, that any direction to ESCROWEE for such investment shall be expressed in writing by one of the parties to this Agreement, and further provided that Escrowee is in receipt of the requisite taxpayer's identification number and investment forms. ESCROWEE will, upon request furnish information concerning procedures and fee schedules for investment.



Waste, Pesticides & Toxics Division
Enforcement & Compliance

Assurance Branch

U.S. Environmental Protection

Agency

Region 5

Mailcode: DRE-9J

77 West Jackson Boulevard

Chicago, Illinois 60604

Fax Number: (312) 353-4342

To: Emily Houghton

Office/Phone: Bockley - King

Facsimile Number: 216/579-1020

From: _____

Office/Phone: _____

Date: 11/4/04 Number of Pages: 1 of 2

Additional Comments: Page 10

Thank You!

November 7, 2002

By FedEx

Ms. Christine M. Liszewski
Associate Regional Counsel
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

RE: RCRA 3008(h) Consent Order
World Kitchen, Inc.
Docket No: RCRA-05-2002-0010

Dear Ms. Liszewski:

I am writing in response to your November 1, 2002 letter to me regarding the Declaration of Restrictions that World Kitchen, Inc. submitted pursuant to paragraph 26 of the above-referenced Consent Order. I have revised the Declaration of Restrictions according to the two changes you required in your November 1, 2002 letter to me. In addition, I enclose the December 12, 1995 warranty deed referenced in the first paragraph of the Declaration of Restrictions.

Please do not hesitate to contact me if you have any questions.

Sincerely,



Keely J. O'Bryan

Enclosures

cc: Mr. Ken Bardo, WPTD
Ronald J. Schott, Esq., American Home Products Corporation
Raymond J. Kulla, Esq., World Kitchen, Inc.
Mr. Jeffrey L. Burman, World Kitchen, Inc.
Michael A. Cyphert, Esq.

Keely.OBryan@ThompsonHine.com Phone 216.566.5686 Fax 216.566.5800

skc 10838544.1

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS (this "Declaration") is made effective as of November ____, 2002 (the "Effective Date"), by EKCO MANUFACTURING OF OHIO, INC., a Delaware corporation ("Owner"), which Owner claims fee title of the real property located in the City of Massillon, Stark County, Ohio, and more fully described on Exhibit A, attached hereto and made a part hereof (the "Property"), under that certain warranty deed dated December 12, 1995, from Ekco Housewares, Inc. in favor of Owner and recorded on February 21, 1996 as Instrument No. 96007752, Stark County Records.

NOW, THEREFORE, in consideration of the Property, the covenants contained in this Declaration, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner hereby declares the following restrictions for the use of the Property:

1. No existing water wells located on the Property, if any, shall be used for drinking, bathing, washing, or other human contact purposes or for livestock, farming or irrigation so long as the groundwater in, on or under the Property contains any contaminant specified in Exhibit B (the "Groundwater Contaminants") at concentrations above the groundwater cleanup levels specified in Exhibit B with respect to such Groundwater Contaminant (the "Groundwater Standards"). No portion of the Property shall be used for the installation of any new water wells for drinking, bathing, washing, or other human contact purposes or for livestock, farming or irrigation on the Property so long as the groundwater in, on or under the Property contains any Groundwater Contaminant in concentrations above the Groundwater Standards.

2. No portion of the Property shall be used for Residential Activities (defined below) so long as the soils at the Property contain any contaminant specified in Exhibit C (the "Residential Soil Contaminants") at concentrations above the soil cleanup levels specified in Exhibit C with respect to such Residential Soil Contaminant (the "Residential Soil Standards"). For purposes hereof, the term "Residential Activities" shall mean:

- (a) single and multi-family dwelling and rental units;
- (b) day care centers and preschools;
- (c) hotels and motels;
- (d) educational (except as a part of Industrial Activities (defined below) at the facility) and religious facilities;
- (e) restaurants and other food and beverage services (except as a part of Industrial Activities at the facility);
- (f) entertainment and recreational facilities (except as a part of Industrial Activities at the facility);

- (g) hospitals and other extended care medical facilities (except as a part of Industrial Activities at the facility); and
- (h) transient or other residential facilities.

For purposes hereof, the term "Industrial Activities" shall mean manufacturing, processing purposes and/or office and warehouse purposes, including, without limitation, production, storage and sales of durable goods and non-food chain products and parking/driveway purposes, and other related purposes incidental thereto.

3. No portion of the Property may be used for activities that will reasonably result in direct contact exposure by humans to soils at the Property that contain any contaminant specified in Exhibit D (the "Industrial Soil Contaminants") at concentrations above the soil cleanup levels specified in Exhibit D with respect to such Industrial Soil Contaminant (the "Industrial Soil Standards")

4. No portion of the Property may be used for activities that will interfere with ongoing remedial actions, operation and maintenance programs, monitoring, or other measures necessary to ensure the effectiveness and integrity of any environmental remediation of the Property, including, without limitation:

- (a) pumping of groundwater that impacts the effectiveness of any on-site pump and treat system used to maintain an inward groundwater gradient from the boundary of the Property to the two existing and active industrial water wells; and

- (b) the installation, construction, removal, or use of any wells, or the excavation of any soil, within those areas of the Property containing any Industrial Soil Contaminant at concentrations above the Industrial Soil Standards.

5. This Declaration shall be recorded in the same manner as a deed in the Office of the Recorder of Stark County, pursuant to ORC Sections 3746.10(C) and 317.

6. If any one or more provisions of this Declaration is found unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

7. This Declaration shall be governed by and interpreted in accordance with the laws of the State of Ohio.

8. All headings used herein are for convenience and shall not be used to interpret or qualify the terms of this Declaration.

9. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public, or for any public use or purpose whatsoever.

IN WITNESS WHEREOF, the Owner has caused this Declaration to be executed as of the Effective Date.

EKCO MANUFACTURING OF OHIO, INC., a
Delaware corporation

By: _____
Print Name: _____
Title: _____

STATE OF OHIO)
) SS
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named _____, the _____ of EKCO MANUFACTURING OF OHIO, INC., the Delaware corporation that did execute the foregoing instrument, who acknowledged that he/she did sign the foregoing instrument as such officer and that the same is his/her own free act and deed and the free act and deed of such corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, this _____ day of November, 2002.

NOTARY PUBLIC

My commission expires on:

EXHIBIT A

Legal Description of Property

Situated in the City of Massillon, County of Stark and State of Ohio, being part of Sections Six (6) and Seven (7), Township ten (10), (Perry Township) Range Nine (9) (and also known as Outlot #81), bounded and described as follows, to-wit,

Beginning at the intersection of the South Bank of Newman's Creek and the West line of the Baltimore and Ohio Railroad Company's Right of Way, said place of beginning being 464.07 feet Northerly along the West line of said Baltimore & Ohio Railroad Company's Right of Way from its intersection with the Southerly line of Section Six (6); thence Westerly along the South Bank of said Creek Two Hundred Sixty-five (265) feet more or less to a point which is North $89^{\circ} 11' 20''$ West Two Hundred Fifty-Two and Thirty-six Hundredths (252.36) feet from the place of beginning, thence $71^{\circ} 10'$ West Two Hundred Thirty-Two and Five tenths (232.5) feet to an iron stake in the South Bank of said Creek, thence North $56^{\circ} 11'$ West Three Hundred Fifty-four (354) feet to an iron stake; thence North $44^{\circ} 40'$ West Four Hundred Fifteen and Two Tenths (415.2) feet to an iron stake in the middle of said Creek; thence South 81° West Fifty-four and Three Tenths (54.3) feet to an iron stake in the middle of said Creek One Hundred Eighteen (118) feet Easterly from the middle of the Right of Way (66 Ft. wide) of the Pittsburgh, Ft. Wayne & Chicago Railroad measured at Right angles thereto; thence South $33^{\circ} 43'$ East along the Northeasterly line of land conveyed to last named Railroad by deed dated November 26, 1892, recorded in Stark County Records Vol. 295, Page 59, Five Hundred Ten (510) feet to an iron stake; thence South $62^{\circ} 42'$ West One Hundred Twenty-five (125) feet along land conveyed by said deed Vol. 295, Page 59, to an iron stake Fifty (50) feet from the center line of the main Right of Way (Sixty-Six (66) feet wide) of said last named Railroad measured at right angles thereto; thence South $27^{\circ} 18'$ East still along the line of lands so conveyed by deed recorded in the Stark County Records, Vol. 295, Page 59, and parallel to the said main Right of Way of said last named Railroad about Five Hundred Seventy-nine and Nine Tenths (579.9) feet to the South line of Section Six (6); thence North $87^{\circ} 39' 5''$ West along Section line Nineteen and Fifty-six Hundredths (19.56) feet; thence South $27^{\circ} 18'$ East parallel to and Thirty-three (33) feet distant from, the middle of the Right of Way of said last named Railroad, measured at right angles thereto and along the Northeasterly line of said Right of Way, Nineteen (19) feet; thence continuing Southeasterly along the Northeasterly line of the Right of Way of said last named Railroad, (deed dated March 3, 1854 to the Ohio & Pennsylvania Railroad Co., for the South part of said Right of Way being recorded in Stark County of Records, Vol. 64, Page 118), Twelve Hundred Fifty-six and Eleven Hundredths (1256.11) feet to its intersection with the Westerly line of the Right of Way of the Baltimore & Ohio Railroad (formerly the Cleveland Lorain and Wheeling Railroad); thence Northerly Eleven Hundred Sixty-one and Eighty-two Hundredths (1161.82) feet along the Westerly line of the Right of Way of the Baltimore & Ohio Railroad as conveyed to The Lake Shore & Tuscarawas Valley Railway Company by deed dated October 15, 1873, recorded in Stark County Records, Volume 135, Page 44, parallel to and distant Thirty (30) feet Westerly from the center line of its Right of Way (Sixty (60) feet wide) to the North line of Section Seven (7), which is also the South line of Section Six (6); thence West along said Section line about Six (6) feet to an iron stake in the westerly line of the Right of Way of the Baltimore & Ohio Railroad (Sixty-six (66) feet wide), formerly Right of Way of The Cleveland, Lorain & Wheeling Railroad Company, thence Northeasterly along the Westerly line

of the Right of Way of said last named Railroad about Four Hundred Sixty-four and Seven Hundredths (464.07) feet to the place of beginning containing about Seventeen and Fifty-seven Hundredths (17.57) acres, to be the same more or less, but subject to all legal highways and water rights.

The above premises comprise a part of the largest of three lots numbered 12 in Earl's Out-Lots, also known and designated in deeds in the chain of title as Lot Number 13 in Earl's Out-Lots, situated in Section 6, Township 10, Range 9; the plat of said Out-Lots being of record in the Stark County Recorder's Office in Plat Book Volume 1, page 31; also parts of Lots 7 and 6 in the Amicable Partition of part of West fractional Section 7, Township 10, Range 9, made by William S. Wetmore, Richard S. Fay and Executors of the Estate of Amos Binney, deceased, on October 17, 1848, a memorandum and plat of which partition is of record in the Stark County Recorder's Office in Volume 40, Page 582. The whole of the above premises, in a renumbering of lots in the City of Massillon, dated February 6, 1929, recorded in the Recorder's Office of Stark County, Schedule No. 3, Page 494, having been renumbered Out-Lot No. 81.

Street Address: 359 State Avenue Extension, N.W., Massillion, Ohio 44646

Prior Deed Reference: Instrument No. 96007752, Stark County Records

Permanent Parcel No.: 06-09319

EXHIBIT B

Groundwater Standards

<u>Groundwater Contaminant</u>	<u>Groundwater Cleanup Level (ug/l)</u>
1,1 – dichloroethane	810
1,1 – dichloroethylene	7
cis – 1,2 – dichloroethylene	70
trans – 1,2 - dichloroethylene	100
1,1,1 – trichloroethane	200
Trichloroethylene	5
Vinyl chloride	2

EXHIBIT C

Residential Soil Standards

<u>Soil Contaminant</u>	<u>Soil Cleanup Level (ug/kg)</u>
1,1 – dichloroethylene	54
1,2 – dichloroethylene (total)	43,000
1,1,1 – trichloroethane	630,000
Trichloroethylene	2,800

EXHIBIT D

Industrial Soil Standards

<u>Soil Contaminant</u>	<u>Soil Cleanup Level (ug/kg)</u>
1,1 – dichloroethylene	120
1,2 – dichloroethylene (total)	150,000
1,1,1 – trichloroethane	1,400,000
Trichloroethylene	6,100

Christine Liszewski

11/19/02 11:36 AM

To: keely.obryan@thompsonhine.com
cc: (bcc: Kenneth Bardo/R5/USEPA/US)
Subject: Declaration of Restrictions - World Kitchen, Inc.

The revised Declaration of Restrictions enclosed with your Nov. 7, 2002 cover letter to me is fine as written. Please send me a certified copy of the declaration after it has been recorded. I can be reached at (312) 886-4670 if you have any questions. Thank you.

= METROSCAN PROPERTY PROFILE =
Stark (OH)

=====

OWNERSHIP INFORMATION

=====

Parcel Number :06 09319
Routing Number :12 01 0200
Owner :Ekco Manufacturing Of Ohio Inc
CoOwner :
Site Address :359 State Ave NW Massillon 44647
Mail Address :359 State Ave NW Massillon Oh 44647
Telephone :Owner: Tenant:

=====

SALES AND LOAN INFORMATION

=====

Transferred :	Loan Amount :
Document# :	Lender :
Sale Price :	Loan Type :
Deed Type :	Interest Rate :
% Owned :	Vesting Type :

=====

ASSESSMENT, APPRAISAL AND TAX INFORMATION

=====

Assessed Land :\$66,325	<u>2001 Tax Info</u>
Assessed Struct:\$398,615	1/2Yr GrossTax :\$15,180.62
Assessed Total :\$464,940	1/2Yr SpclAssmt:
Prior Assd Land: \$66,325	1/2Yr 10%Redctn:\$1,247.89
Prior Assd Stct: \$398,615	1/2Yr ROHRedctn:
Prior Assd Totl: \$464,940	1/2Yr HB 9-2-0 :\$2,701.74
Market Land :\$189,500	1/2Yr Net Tax :\$11,230.99
Market Struct :\$1,138,900	Delinquent :
Market Total :\$1,328,400	Exempt Type :
% Improved :86	
Tax District :Massillon City	

=====

PROPERTY DESCRIPTION

=====

Census :Tract:7139.00 Block:1	Local Map :31 A3
School Dist :	Nbrhd Code :IAOP
Neighbrd Age :Old	Nbrhd Mix :Agricultural
Neighbrd Type :Industrial	Nbrhd Desire:Poor
Land Use :330 Ind,Manufacturing/Assembly,Medium	
Legal :OL 81 17.57A	
:	
:	

Profile-Page 1 of 2

*Information compiled from various sources. Real Estate Solutions makes no representations
or warranties as to the accuracy or completeness of information contained in this report.*

MASSILLON	
MAP NUMBER	12
TAX DISTRICT	06
SCALE 1"=100' REVISED 4-2-97 RBY	

125

INDEX	18
DESCRIPTION	6
CROSS REF	

96007752

RELEASED THIS DATE
JANE VIGORIS
STARK COUNTY RECORDER

WARRANTY DEED

96 FEB 21 PM 3:50

FEE 22.00

KNOW ALL MEN BY THESE PRESENTS that EKCO HOUSEWARES, INC., a corporation organized and existing under the laws of the State of Delaware (GRANTOR), whose address is 9234 West Belmont Avenue, Franklin Park, Illinois 60131,

in consideration of Ten Dollars (\$10.00) and other good and valuable consideration to it paid by EKCO MANUFACTURING OF OHIO, INC., a corporation organized and existing under the laws of the State of Delaware (GRANTEE), whose address is 359 State Avenue, Extension N.W., Massillon, Ohio 44646, hereby Grant bargain, sell and convey to said Grantee, its successors and assigns forever, the following described Real Estate:

ALL those certain pieces, parcels or tracts of land and the buildings and improvements erected thereon:

Situated in the City of Massillon, County of Stark and State of Ohio, being part of Sections Six (6) and Seven (7), Township ten (10), (Perry Township) Range Nine (9) (and also known as Outlot #81), bounded and described as follows, to-wit,

Beginning at the intersection of the South Bank of Newman's Creek and the West line of the Baltimore and Ohio Railroad Company's Right of Way, said place of beginning being 464.07 feet Northerly along the West line of said Baltimore & Ohio Railroad Company's Right of Way from its intersection with the Southerly line of Section Six (6); thence Westerly along the South Bank of said Creek Two Hundred Sixty-five (265) feet more or less to a point which is North 89° 11' 20" West Two Hundred Fifty -Two and Thirty-six Hundredths (252.36) feet from the place of beginning; thence 71° 10' West Two Hundred Thirty-Two and Five tenths (232.5) feet to an iron stake in the South Bank of said Creek; thence North 56° 11' West Three Hundred Fifty-four (354) feet to an iron stake; thence North 44° 40' West Four Hundred Fifteen and Two Tenths (415.2) feet to an iron stake in the middle of said Creek; thence South 81° West Fifty-four and Three Tenths (54.3) feet to an iron stake in the middle of said Creek One Hundred Eighteen (118) feet Easterly from the middle of the Right of Way (66 Ft. wide) of the Pittsburgh, Ft. Wayne & Chicago Railroad measured at Right angles thereto; thence South 33° 43' East along the Northeasterly line of land conveyed to last named Railroad by deed dated November 26, 1892, recorded in Stark County Records Vol. 295, Page 59, Five Hundred Ten (510) feet to an iron stake; thence South 62° 42' West One Hundred Twenty-five (125) feet along land conveyed by said deed Vol. 295, Page 59, to an iron stake Fifty (50) feet from the center line of the main Right of Way (Sixty-Six (66) feet wide) of said last named Railroad measured at right angles thereto; thence South 27° 18' East still along the line of lands so conveyed by deed recorded in the Stark County Records, Vol. 295, Page 59, and parallel to the said main Right of Way of said last named Railroad about Five Hundred Seventy-nine and Nine Tenths (579.9) feet to the South line of Section Six (6); thence North 87° 39' 5" West along Section line Nineteen and Fifty-six

Hundredths (19.56) feet; thence South 27° 18' East parallel to and Thirty-three (33) feet distant from, the middle of the Right of Way of said last named Railroad, measured at right angles thereto and along the Northeasterly line of said Right of Way, Nineteen (19) feet; thence continuing Southeasterly along the Northeasterly line of the Right of Way of said last named Railroad, (deed dated March 3, 1854, to the Ohio & Pennsylvania Railroad Co., for the South part of said Right of Way being recorded in Stark County of Records, Vol. 64, Page 118), Twelve Hundred Fifty-six and Eleven Hundredths (1256.11) feet to its intersection with the Westerly line of the Right of Way of the Baltimore & Ohio Railroad (formerly the Cleveland Lorain and Wheeling Railroad); thence Northerly Eleven Hundred Sixty-one and Eighty-two Hundredths (1161.82) feet along the Westerly line of the Right of Way of the Baltimore & Ohio Railroad as conveyed to The Lake Shore & Tuscarawas Valley Railway Company by deed dated October 15, 1873, recorded in Stark County Records, Volume 135, Page 44, parallel to and distant Thirty (30) feet Westerly from the center line of its Right of Way (Sixty (60) feet wide) to the North line of Section Seven (7), which is also the South line of Section Six (6); thence West along said Section line about Six (6) feet to an iron stake in the westerly line of the Right of Way of the Baltimore & Ohio Railroad (Sixty-six (66) feet wide), formerly Right of Way of The Cleveland, Lorain & Wheeling Railroad Company, thence Northeasterly along the Westerly line of the Right of Way of said last named Railroad about Four Hundred Sixty-four and Seven Hundredths (464.07) feet to the place of beginning containing about Seventeen and Fifty-seven Hundredths (17.57) acres, to be the same more or less, but subject to all legal highways and waterways and water rights.

The above premises comprise a part of the largest of three lots numbered 12 in Earl's Out-Lots, also known and designated in deeds in the chain of title as Lot Number 13 in Earl's Out-Lots, situated in Section 6, Township 10, Range 9; the plat of said Out-Lots being of record in the Stark County Recorder's Office in Plat Book Volume 1, page 31; also parts of Lots 7 and 6 in the Amicable Partition of part of West fractional Section 7, Township 10, Range 9, made by William S. Wetmore, Richard S. Fay and Executors of the Estate of Amos Binney, deceased, on October 17, 1848, a memorandum and plat of which partition is of record in the Stark County Recorder's Office in Volume 40, Page 582. The whole of the above premises, in a renumbering of lots in the City of Massillon, dated February 6, 1929, recorded in the Recorder's Office of Stark County, Schedule No. 3, Page 494, having been renumbered Out-Lot No. 81.

Also subject to and together with all the easements, rights and privileges in Rights of Way, spur tract agreements, including tracts, ties and road beds.

Being the same property acquired by Grantor by deed dated September 7, 1984, Numbered 84 024582, and recorded in Volume 243, Page 873 of the Stark County, Ohio Records.

Parcel Nos. 06-09319; ~~06-00185~~; ~~06-00186~~

BEING the same more or less, but subject to all legal highways.

And all the estate, title and interest of the said EKCO HOUSEWARES, INC. either in law or in equity, of, in and to the said premises; together with all the privileges and appurtenances to

the same belonging, and all the rents, issues and profits thereof;

And the said EKCO HOUSEWARES, INC., for its successors and assigns does hereby covenant with the said EKCO MANUFACTURING OF OHIO, INC. that it is the true and lawful owner of the said premises, and has full power to convey the same; and that the title so conveyed is clear, free and unencumbered, and further, that it does warrant and will defend the same against all claim or claims, of all persons claiming by, through or under said Grantor except restrictions, conditions and easements of record, zoning ordinances and facts that would be disclosed by a survey of the premises.

TO HAVE AND TO HOLD the above-granted and bargained premises, with the appurtenances thereof, unto said Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, Grantor had caused its corporate named to be subscribed hereto by Donato A. DeNovellis, its Vice President and Chief Financial Officer, and Jeffrey A. Weinstein, its Secretary, thereunto duly authorized by resolutions of its Board of Directors made as of December 12, 1995.

Signed and acknowledged in the presence of:

EKCO HOUSEWARES, INC.

Neidi Lamarche

Witness

By

Donato A. DeNovellis

Donato A. DeNovellis, Vice President
and Chief Financial Officer

Neidi Lamarche

Witness

By

Jeffrey A. Weinstein
Jeffrey A. Weinstein, Secretary

JANET WEIR CREIGHTON
Stark County Auditor

FEE 50.00

FEB 21 1996

EMODEED. WPD

3

TRANSFERRED 50
TRANSFER NOT NECESSARY
DEPUTY [Signature]
IN COMPLIANCE WITH ORC 319.202

State of New Hampshire)

: ss.:

County of Hillsborough)

On this 25th day of January, 1996, before me personally came Dorab A DeNovellis, to me known, who being by me duly sworn, did depose and say that he resides at 4 Basswood Drive, Andover, MA 01810; that he is the VP and CFO of EKCO HOUSEWARES, INC., the corporation described herein, and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal, that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

Kathleen A. Moody
Notary Public

KATHLEEN A. MOODY, Notary Public
My Commission Expires April 10, 1998

State of New Hampshire)

: ss.:

County of Hillsborough)

On this 25th day of January, 1996, before me personally came Jeffrey A. Weinstein, to me known, who being by me duly sworn, did depose and say that he resides at 22 Nathan Lord Rd, Amherst, NH 03031; that he is the Secretary of EKCO HOUSEWARES, INC., the corporation described herein, and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal, that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

Kathleen A. Moody
Notary Public

KATHLEEN A. MOODY, Notary Public
My Commission Expires April 10, 1998

This instrument was prepared by Linda R. Millman, Associate General Counsel, Ekco Group, Inc., 98 Spit Brook Road, Nashua, New Hampshire 03062.

Memorandum

Date: September 12, 2003

To: Official File

From: Ken Bardo *Ken Bardo*

Re: 9/11/03 Site Visit, World Kitchen, Inc., Massillon, OH, OHD 045 205 424

The purpose of the site visit was to confirm that the final remedy had been constructed at the World Kitchen, Inc. (WKI) facility pursuant to the Administrative Order on Consent, EPA Docket No. RCRA-05-2002-010, effective August 26, 2002. The final remedy consists of the pulse pumping of groundwater at wells W-1 and W-10, air stripping of the extracted groundwater, air sparging of shallow groundwater at Area 3-East, and soil vapor extraction (SVE) at Areas 1, 2, 3, and 3-East. The due date for completing construction and beginning operation of the final remedy was August 26, 2003. On August 29, 2003, WKI notified that startup of the air sparging and SVE systems occurred the week of August 11 and pulse pumping was initiated the week of August 18.

I conducted the site visit from 10 AM to 3 PM on Thursday, September 11, 2003. The weather was clear and warm, with a temperature in the upper-70's to low-80's. The Massillon, Ohio area had been experiencing very wet conditions in August but September has been dry. The ground surface was fairly dry with some standing puddles, especially along the west side of the building.

Present during the site visit were Jeff Burman representing WKI, Matt Basso representing American Home Products (now known as Wyeth), and Tom Cornuet and Michael Corbin representing the consultant, Weston Solutions, Inc. Before walking the facility, Weston Solutions gave an overview of the final remedy and maintenance activities that had been performed. For example, recent maintenance activities include replacement of the air stripper packing, replacement of the air stripper blower, replacement of the well W-10 piping, valves, and flow meter, and replacement of the well W-1 pump.

According to documents received at the meeting, WKI has removed approximately 43,000 pounds of VOCs from groundwater by pumping wells W-1 and W-10. Pumping was initiated in 1986. The current removal rates for VOCs are approximately two pounds/day. Weston estimates that the SVE system has removed over 700 lbs of VOCs or approximately 25 lbs/day since startup. The most successful recovery area is Area 3 inside the manufacturing building and near well W-10. This was the site of a historic spill and the location of former degreasers. The water table is very deep in this area due to the pumping of well W-10 and the surface soils are dry. The least successful recovery area is Area 1 due to wet surface conditions, a shallow water table, and the presence of water within the SVE wells.

Currently, well W-1 is pulse-pumped while well W-10 is being continually pumped. Changes in non-contact cooling water operations have been made and groundwater from both production wells W-1 and W-10 is no longer needed for the manufacturing process. Non-contact cooling

water is obtained from the city water line. Therefore, wells W-1 and W-10 are now used solely as extraction wells.

The air sparging and SVE systems were operating during the site visit. The systems were well-constructed. All SVE and air sparging wells have below grade bentonite seals and competent surface cement pads. The SVE wells are cycled, with only certain wells in each area extracting at any one time. All three wells in Area 1 were off due to the presence of water in the wells. The area receives run-off from the hill and RR tracks immediately to the west. Soil had been placed against the building to prevent infiltration from runoff. Significant amounts of water and vapor from the SVE wells has accumulated in the condensation tank. Condensation water has already been removed once and run through the air stripper. All wells in Area 2 were operational. Only one blower is used for both Areas 1 and 2. Extracted soil vapor is run through a heat exchanger to increase carbon adsorption efficiency then through two small carbon adsorption canisters operated in series. The carbon canisters are supplied by Tigg Corporation located in Pittsburgh, PA. An indicator tube at the top of each canister, along with OVM monitoring, is used to determine carbon breakthrough. A purple hue in the carbon disappears and the carbon becomes black as it adsorbs the VOCs. Numerous sampling ports exist in the PVC lines to allow sampling of the extracted air also.

Area 3-East has four air sparging wells that were operating at approximately 3 psi. Five of the seven SVE wells were operating. The carbon canisters here are the same size found at Area 1. One canister has already been spent and has been placed at Area 3 while waste characterization is performed.

Area 3 is the most productive. The area uses a larger blower and two large 1000-gallon canisters were already spent and being stored in the area prior to off-site shipment. The new carbon canisters have a 2000-gallon capacity. Some vinyl chloride has been noted during the monitoring and is not being fully captured like the TCE and 1,1,1-TCA. However the vinyl chloride emissions are within the Ohio EPA "de minimis" rule limits. Only the east extraction line, with four SVE wells, was being operated during the site visit. Since VOC vapors were encountered during construction of the 2-foot SVE trenches in Area 3, horizontal wells were laid in the center and western trench along with the nine vertical extraction wells. The trench and well construction in this area was flush with the floor since it is a receiving and storage area for WKI production. While in the area, I also observed the new piping, valves, and flow meter at well W-10. Everything appeared to be well-constructed.

The last area visited was the air stripper. The tower was in good shape and I observed the new blower. All groundwater being air-stripped was dropped into a pit just north of the air stripper tower for discharge to Newman Creek. The water was clear with no odors.

We agreed to meet again the week of November 17 at the EPA office to discuss the final remedy construction completion report and O&M plan along with updates on the final remedy operations.

**11 September 2003 Meeting Agenda
Corrective Measures Implementation
World Kitchen, Inc. Massillon, Ohio Facility**

10:00

1. Program Overview
2. Consent Order Schedule and Progress
 - a. Quarterly Progress Reports
 - b. Consent Order Plans and Reports
 - c. Due Diligence
3. Groundwater Remediation System Maintenance Activities
 - a. Air Stripper Packing Replacement
 - b. Air Stripper Blower Replacement
 - c. Well W-10 Piping, Valves, and Flow Meter Replacement
 - d. Well W-1 Pump Replacement
4. SVE/AS Construction
 - a. Air Permit
 - b. Well Installation
 - c. Piping
 - d. Blower Sheds
 - e. Waste Management
 - f. Pulse Pumping Remote Monitoring Installation
5. Remediation System Operation
 - a. Groundwater Pulse Pumping and Treatment
 - b. Soil Vapor Extraction
 - c. Groundwater Air Sparging
 - d. Remote Monitoring
 - e. Soil and Groundwater VOC Mass Removal
6. Site Remediation System Tour
7. Meeting Summary and Action Items
 - a. General Questions and Comments
 - b. Schedule Next Meeting/Conference Call for October/November 2003 to Discuss Draft Operation & Maintenance Plan
 - c. Continue to Operate and Maintain Remediation System and the Quarterly Groundwater Sampling and Reporting

8. Adjourn for lunch

Next mtg -
Week of 11/17 for
O&M + Const. Comp. Report
Vinyl Chloride in Area 3
not being adsorbed but
<15 lbs/day "de minimis"

Area 1 wet. Adjusting
wells on. Area 1 - off
Area 2 - on.

Area 3 - east, 2 south
wells off, all AS on.

Area 3 - Only east
section on. looked
@ well vault.

Have 2 wells 2' below
grade in sand.
Cover to floor 4-6"

New pipeline from
W-10.

All W-1 and W-10
water now discharged
Use less amounts so
only use city water
for non-vented cooling
W-1 & W-10 solely
extraction wells now
W-1 being pulsed.

Everything well
constructed.

Numerous sampling
ports for testing
Only condensation @ Area 1.

3 yr. re-packing schedule.
Waited 5 yrs. and hard to get
out (condensation) last time.

- Tigg Corp. put through
air stripper
have heat exchangers
to cool for better
carbon adsorption

Colorimetric
(purple) @ top
Indicator - if
black then spent
4 canisters (3 spent)
@ Area 3, 2 from
Area 1 and 2 from Area 1

All PVC, insulated & leads.
2000 gal. Carbon canisters @ Area 3
11 Sep 03 Meeting Agenda.doc

~700 lbs removed in 3-4 wks.

<15 lbs/day, no carbon needed.

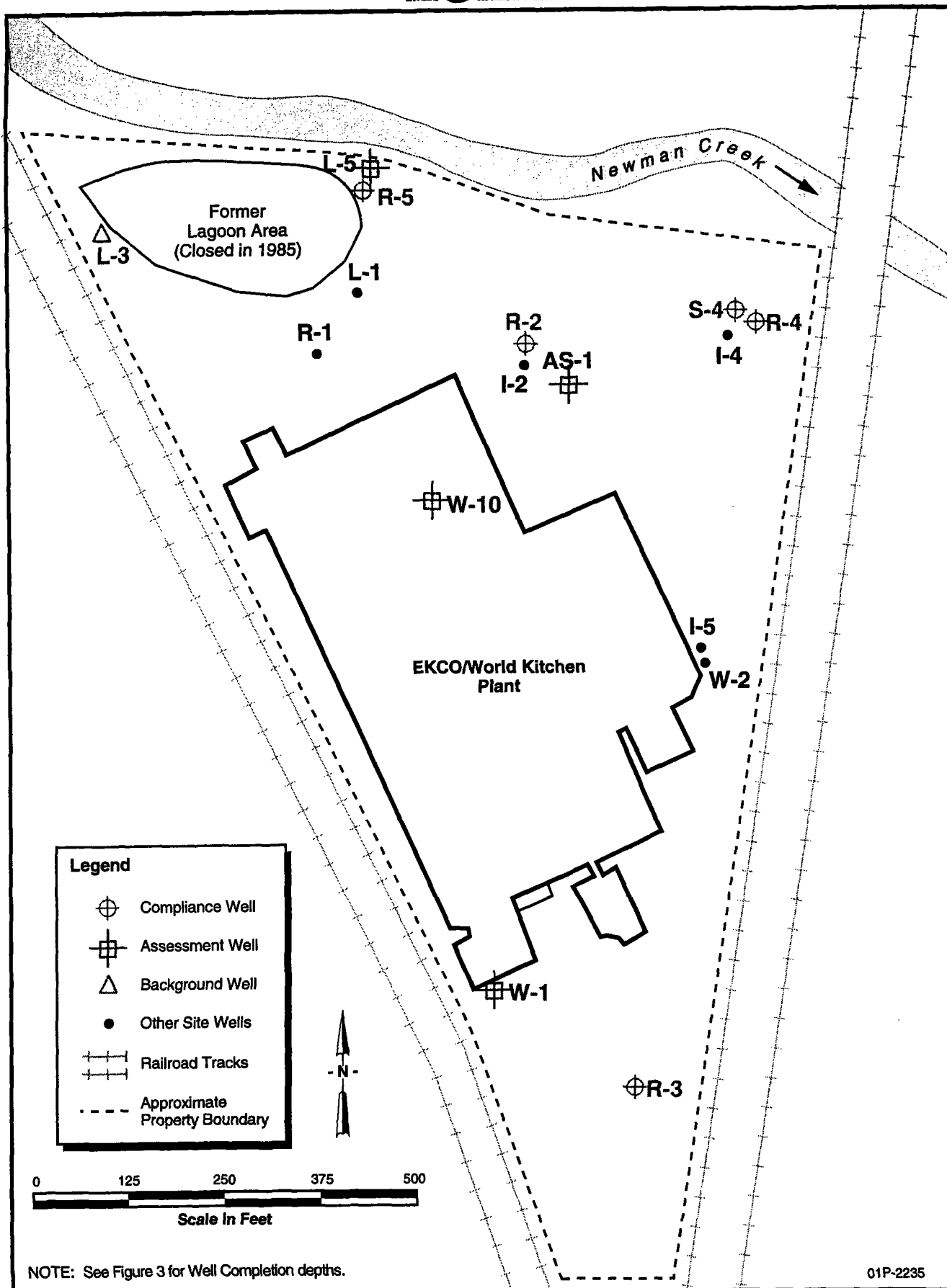
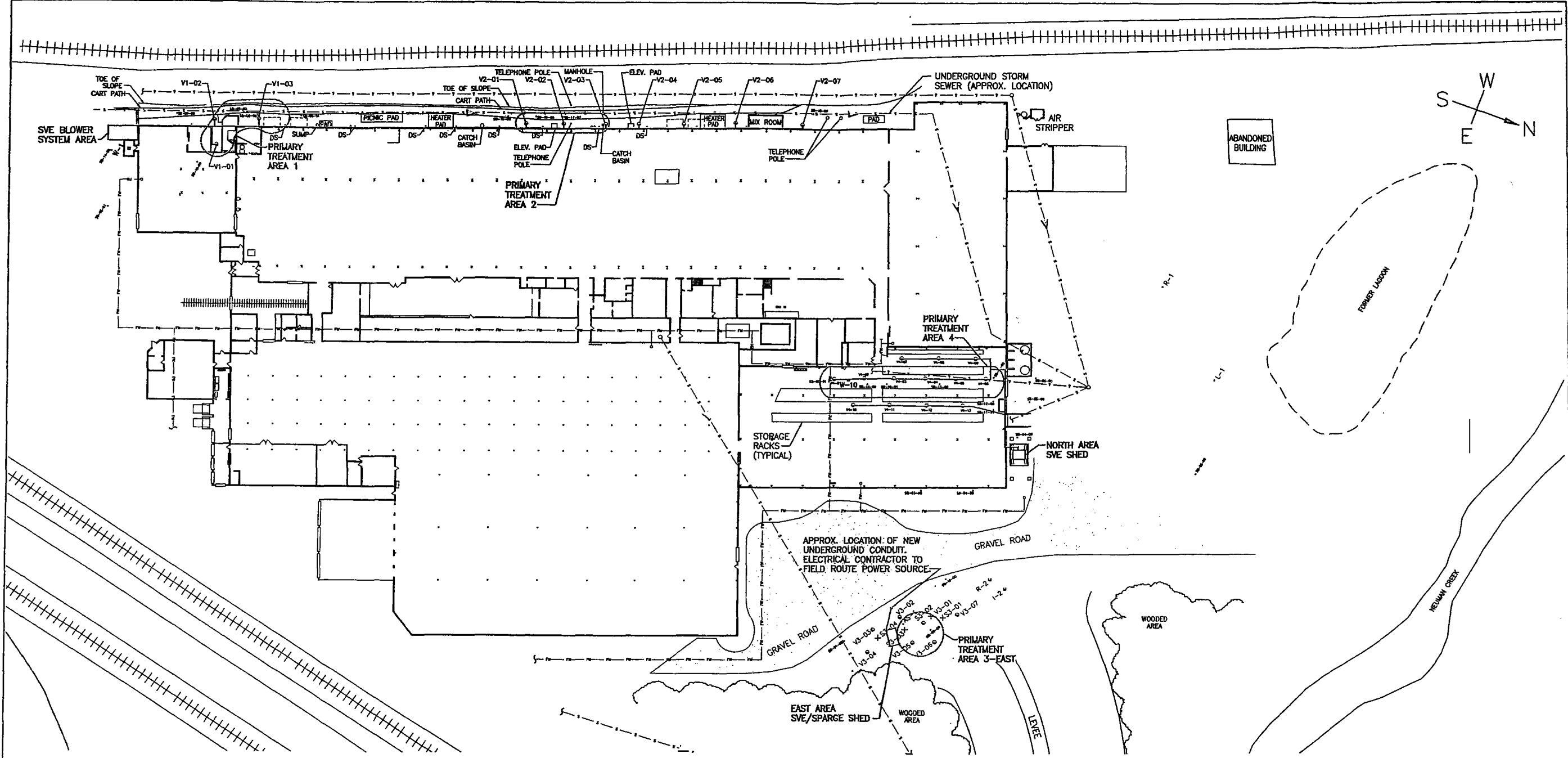


FIGURE 2 GROUNDWATER MONITORING PROGRAM BACKGROUND, ASSESSMENT, AND COMPLIANCE WELLS



NOTE:
VENTS, BUILDING AND SHED LOCATIONS BASED ON SURVEY DATA FROM BUCKEYE SURVEYING SERVICES, INC. DATED 27, AUGUST 2003.

- LEGEND**
- FW — EXISTING FIRE WATER PIPING
 - +++++ EXISTING RAIL LINE
 - S — EXISTING STORM SEWER PIPING
 - ? — POSSIBLE PIPING
 - SVE PIPING
 - DS° EXISTING DOWN SPOUT
 - R-2M EXISTING GROUNDWATER MONITOR WELL
 - W-10 EXISTING RECOVERY WELL
 - SB-01 SOIL BORING LOCATION
 - + SPARGE WELL
 - SOIL VAPOR EXTRACTION VENT

DRAFT

40 0 40 80
SCALE 1"=40'-0"

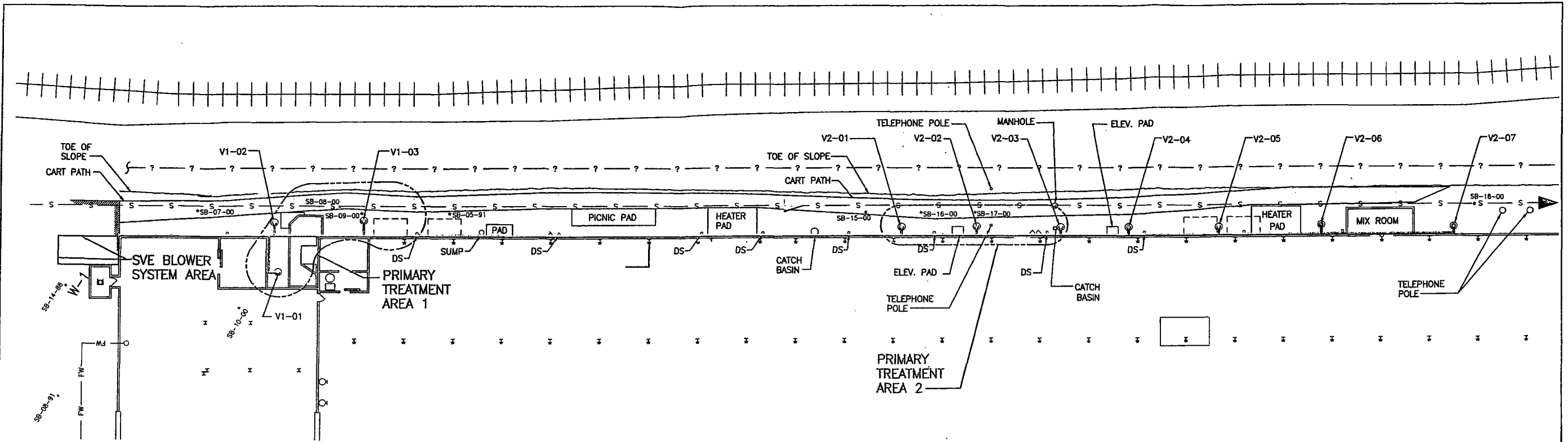
WORLD KITCHEN, INC.
MASSILLON, OHIO FACILITY
Prepared for Wyeth, Florham Park, New Jersey

WESTON
SOLUTIONS

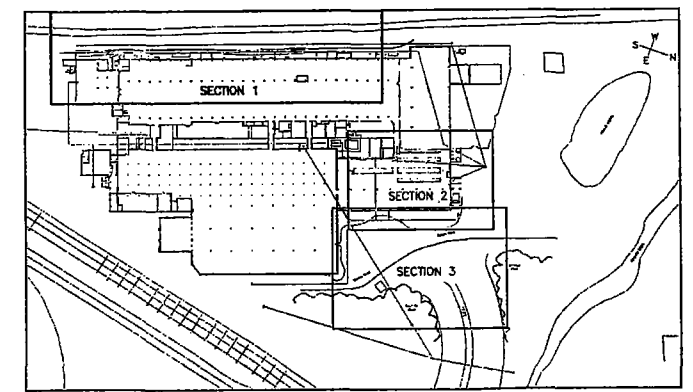
NO.	REV.	APP.	REVISION	NO.	DATE	APP.	REVISION
B	02/03		REVISED PLAN BASED ON SURVEY DATA DATED 27 AUGUST 2003.				
A	02/03		SHIFTED PRIMARY TREATMENT AREA 2 TEN FEET SOUTH.				

CHECKED	DATE	CLIENT APPROVALS	DATE
DES. ENG.			
PROJ. ENG.			
PROJ. MGR.			
APPROVED			
APPROVED			

SVE AND SPARGE GENERAL PIPING LAYOUT			
DESIGNER	DATE	DWG. NO.	REV. NO.
A.B.H.	11/4/02	101	B
SCALE	1"=40'-0"	029940020090005	



PARTIAL PLAN -- SECTION 1



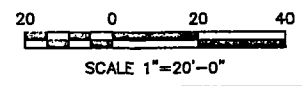
KEY PLAN
N.T.S.

NOTE:

VENTS, BUILDING AND SHED LOCATIONS BASED ON SURVEY DATA FROM BUCKEYE SURVEYING SERVICES, INC. DATED 27, AUGUST 2003.

LEGEND

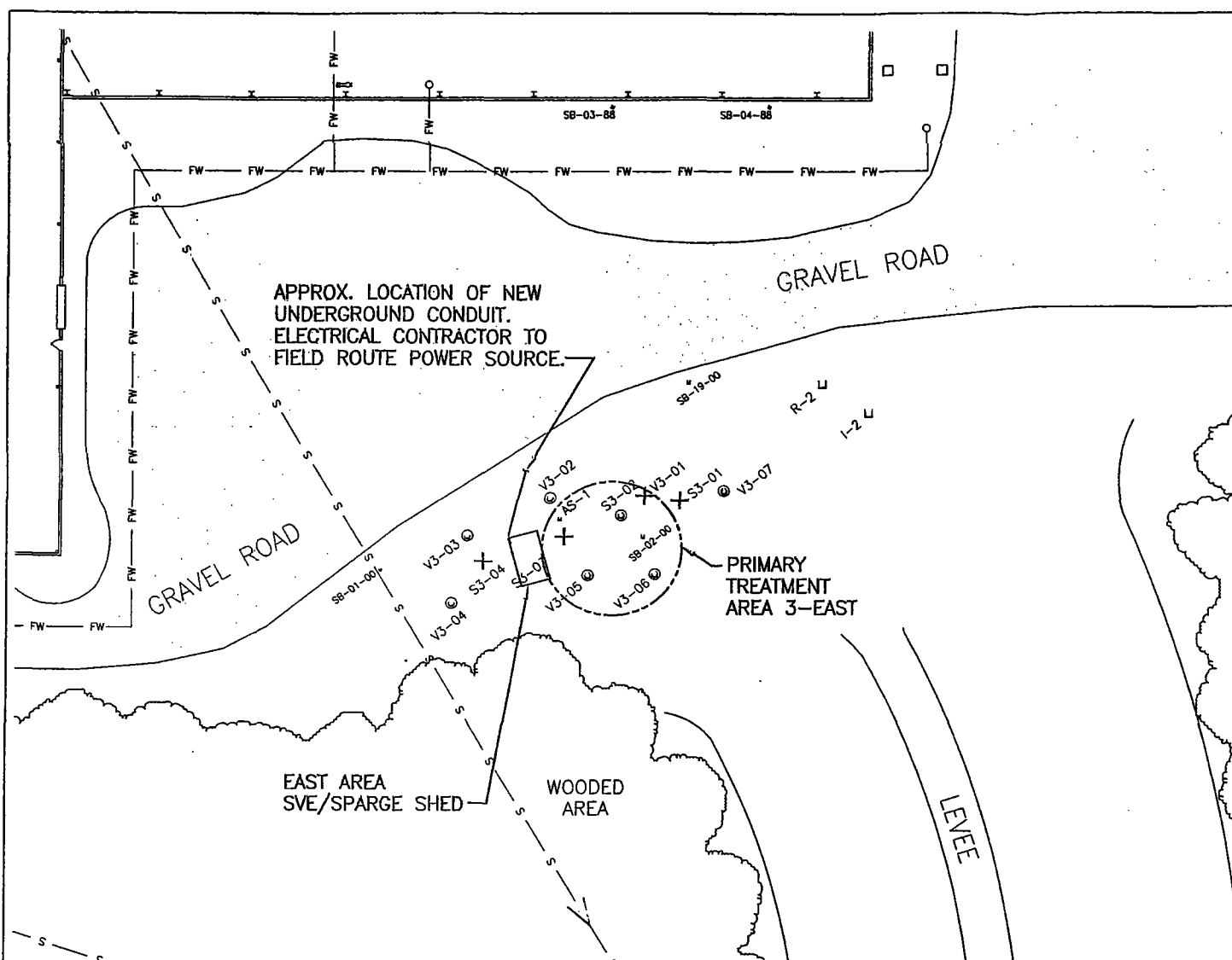
- FW — EXISTING FIRE WATER PIPING
- +++++ EXISTING RAIL LINE
- S — EXISTING STORM SEWER PIPING
- ? — POSSIBLE PIPING
- SVE PIPING
- DS° EXISTING DOWN SPOUT
- R-2" EXISTING GROUNDWATER MONITOR WELL
- W-10" EXISTING RECOVERY WELL
- SB-10-00" SOIL BORING LOCATION
- SOIL VAPOR EXTRACTION VENT



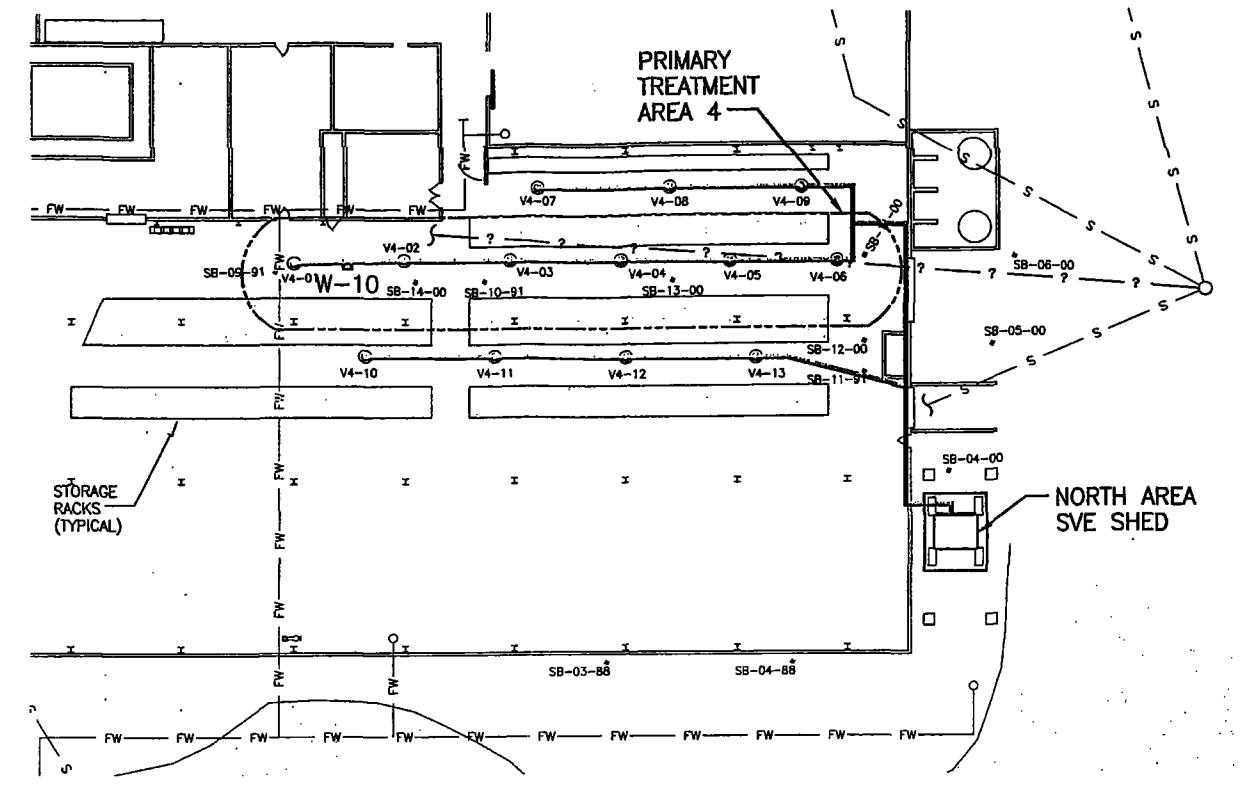
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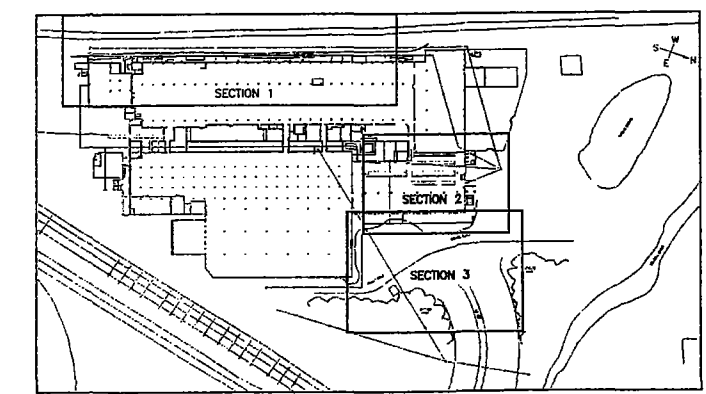
B 4/2/03 REVISED PLAN BASED ON SURVEY DATA DATED 27 AUGUST 2003. A 04/02 SHIFTED PRIMARY TREATMENT AREA 2 TEN FEET SOUTH.				WORLD KITCHEN, INC. MASSILLON, OHIO Prepared for Wyeth, Florham Park, New Jersey 				CHECKED: [] DATE: [] CLIENT APPROVALS: [] DATE: [] DES. ENG. [] PROJ. ENG. [] PROJ. MGR. [] APPROVED: [] APPROVED: []				SVE SYSTEM LAYOUT AREA 1 & AREA 2 DRAWN: A.B.H. DATE: 11/4/02 DWS. NO. 102 SCALE: 1"=20'-0" 029940020090005 SHEET: 1 OF 1			
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PARTIAL PLAN - SECTION 3



PARTIAL PLAN - SECTION 2



KEY PLAN
N.T.S.

NOTE:
VENTS, BUILDING AND SHED LOCATIONS BASED ON SURVEY DATA FROM BUCKEYE SURVEYING SERVICES, INC. DATED 27, AUGUST 2003.

- LEGEND**
- FW — EXISTING FIRE WATER PIPING
 - +++++ EXISTING RAIL LINE
 - S — EXISTING STORM SEWER PIPING
 - ? — POSSIBLE PIPING
 - SVE PIPING
 - DS° EXISTING DOWN SPOUT
 - R-2° EXISTING GROUNDWATER MONITOR WELL
 - W-10° EXISTING RECOVERY WELL
 - SB-03-00° SOIL BORING LOCATION
 - + SPARGE WELL
 - SOIL VAPOR EXTRACTION VENT

20 0 20 40
SCALE 1"=20'-0"

DRAFT

FILE NO. G:\ACUPPRA\029840020090005 EXCO\1003.dwg

NO.	DATE	APPR.	REVISION
A	11/4/02		REVISED PLAN BASED ON SURVEY DATA DATED 27 AUGUST 2003.

WORLD KITCHEN, INC.
MASSILLON, OHIO
Prepared for Wyeth, Florham Park, New Jersey

WESTON
SOLUTIONS

CHECKED	DATE	CLIENT APPROVALS	DATE
DES. ENL.			
PROD. ENL.			
PROD. LNS.			
APPROVED			
APPROVED			

SVE AND SPARGE SYSTEM LAYOUT AREA 3-EAST & AREA 4			
DRWN	DATE	ENL. NO.	REV. NO.
A.B.H.	11/4/02	103	A
SCALE	1"=20'-0"	029840020090005	ENT. X OF X

**Unvalidated August 2003 Groundwater Monitoring Program Sampling Results
World Kitchen, Inc., Massillon, Ohio, Facility**

		Field Sample ID		R03-081203-04	R03-081303-03	AS01-081303-01	L03-081203-01	L05-081203-01	R02-081203-01	R03-081303-01
		Sample Date		8/12/2003	8/13/2003	8/13/2003	8/12/2003	8/12/2003	8/12/2003	8/13/2003
		Location ID		Field QC	Field QC	AS01	L03	L05	R02	R03
		Depth		0 - 0	0 - 0	0 - 0	0 - 0	0 - 0	0 - 0	0 - 0
Parameter	Result Units	Clean-up Standard Value	Clean-up Standard Unit							
1,1,1-Trichloroethane	ug/l	200	ug/l	1 U	1 U	1.6	1 U	1 U	1 U	7.6
1,1-Dichloroethane	ug/l	810	ug/l	1 U	1 U	130	1 U	6.8	3.4	55
1,1-Dichloroethene	ug/l	7	ug/l	1 U	1 U		1 U	1 U	1 U	4.9
cis-1,2-Dichloroethene	ug/l	70	ug/l	1 U	1 U	8.7	1 U	15	7.2	4.9
trans-1,2-Dichloroethene	ug/l	100	ug/l	1 U	1 U	0.57 J	1 U	1 U	1 U	1 U
Trichloroethene	ug/l	5	ug/l	1 U	1 U		1 U	1 U	1.3	
Vinyl Chloride	ug/l	2	ug/l	1 U	1 U		1 U		1 U	1 U

		Field Sample ID		R03-081303-02	R04-081203-01	R05-081203-01	S04-081203-01	W01-081203-01	W10-081203-01
		Sample Date		8/13/2003	8/12/2003	8/12/2003	8/12/2003	8/12/2003	8/12/2003
		Location ID		R03	R04	R05	S04	W01	W10
		Depth		0 - 0	0 - 0	0 - 0	0 - 0	0 - 0	0 - 0
Parameter	Result Units	Clean-up Standard Value	Clean-up Standard Unit						
1,1,1-Trichloroethane	ug/l	200	ug/l	7.8	1 U	1 U	1 U	4.8	
1,1-Dichloroethane	ug/l	810	ug/l	60	1.7	1.5	1 U	27	37
1,1-Dichloroethene	ug/l	7	ug/l	5.4	1 U	1 U	1 U	2.8	5.0
cis-1,2-Dichloroethene	ug/l	70	ug/l	5.0	1 U	13	1 U	5.4	
trans-1,2-Dichloroethene	ug/l	100	ug/l	1 U	1 U	1 U	1 U	1 U	1.1
Trichloroethene	ug/l	5	ug/l		1 U	3.9	3.2		
Vinyl Chloride	ug/l	2	ug/l	1 U	1.1		1 U	1 U	0.71 J

Notes:

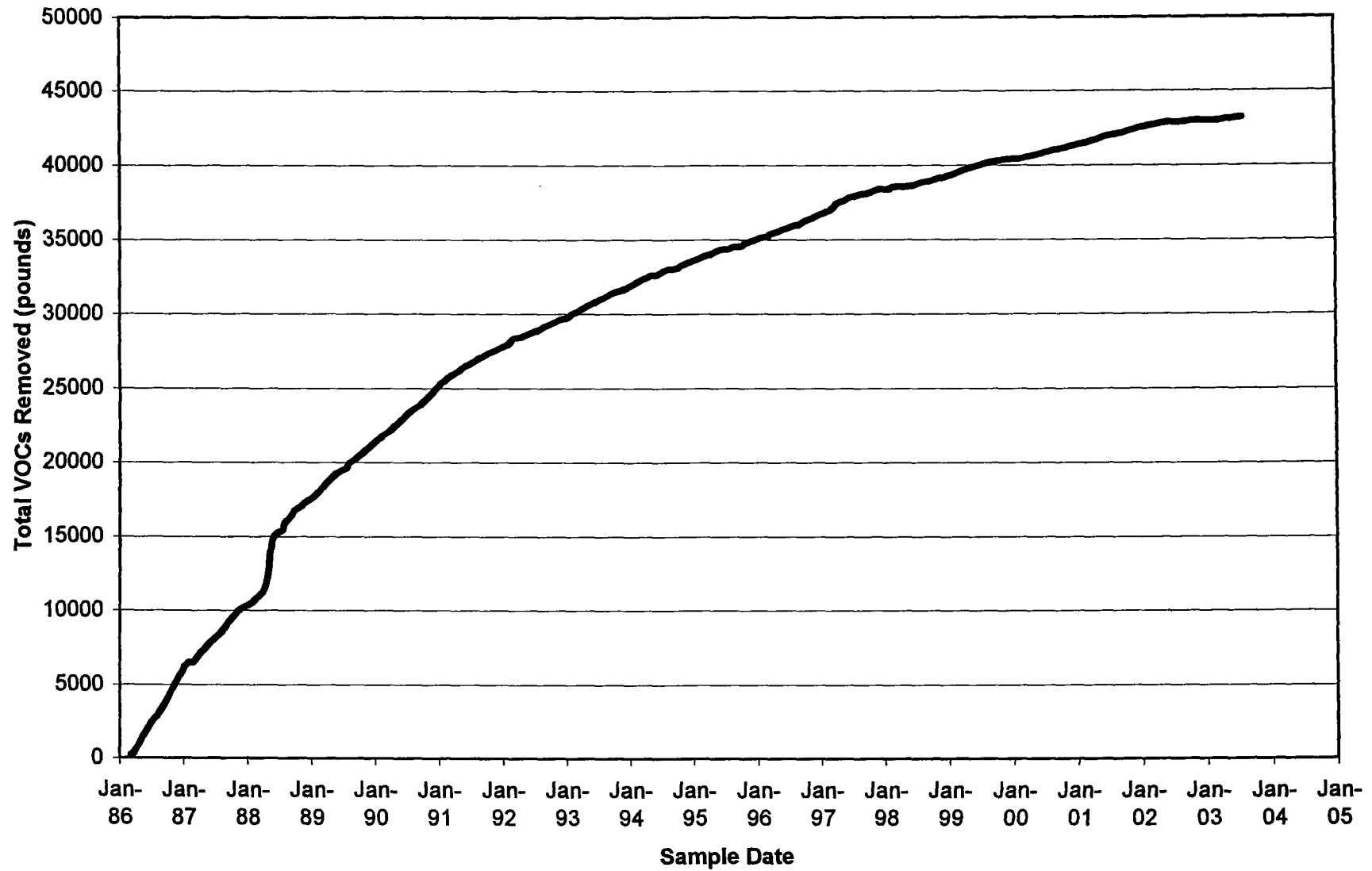
U = Analyte was not detected at or above the reporting limit.

J = Result is estimated value below the reporting limit.

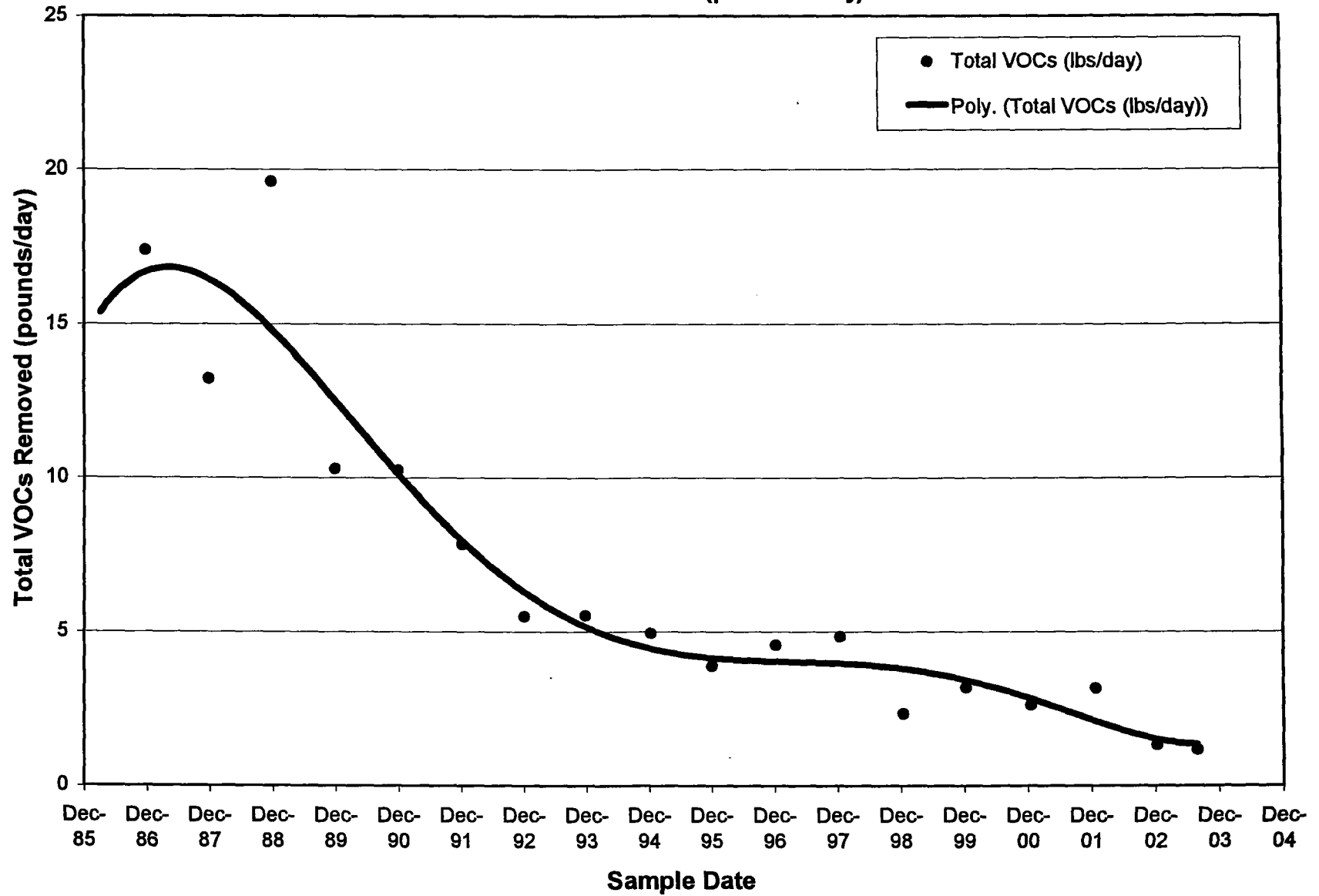
10 Analyte detected above the reporting limit.

20 Analyte detected above the reporting limit and above the Clean-up Standard Value.

**Recovery Wells W-1 and W-10
Cumulative VOCS Removed (pounds)**



Recovery Wells W-1 and W-10
Total VOCS Removed (pounds/day)



DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS (this "Declaration") is made effective as of December 18, 2002 (the "Effective Date"), by EKCO MANUFACTURING OF OHIO, INC., a Delaware corporation ("Owner"), which Owner claims fee title of the real property located in the City of Massillon, Stark County, Ohio, and more fully described on Exhibit A, attached hereto and made a part hereof (the "Property"), under that certain warranty deed dated December 12, 1995, from Ekco Housewares, Inc. in favor of Owner and recorded on February 21, 1996 as Instrument No. 96007752, Stark County Records.

NOW, THEREFORE, in consideration of the Property, the covenants contained in this Declaration, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner hereby declares the following restrictions for the use of the Property:

1. No existing water wells located on the Property, if any, shall be used for drinking, bathing, washing, or other human contact purposes or for livestock, farming or irrigation so long as the groundwater in, on or under the Property contains any contaminant specified in Exhibit B (the "Groundwater Contaminants") at concentrations above the groundwater cleanup levels specified in Exhibit B with respect to such Groundwater Contaminant (the "Groundwater Standards"). No portion of the Property shall be used for the installation of any new water wells for drinking, bathing, washing, or other human contact purposes or for livestock, farming or irrigation on the Property so long as the groundwater in, on or under the Property contains any Groundwater Contaminant in concentrations above the Groundwater Standards.

2. No portion of the Property shall be used for Residential Activities (defined below) so long as the soils at the Property contain any contaminant specified in Exhibit C (the "Residential Soil Contaminants") at concentrations above the soil cleanup levels specified in Exhibit C with respect to such Residential Soil Contaminant (the "Residential Soil Standards"). For purposes hereof, the term "Residential Activities" shall mean:

- (a) single and multi-family dwelling and rental units;
- (b) day care centers and preschools;
- (c) hotels and motels;
- (d) educational (except as a part of Industrial Activities (defined below) at the facility) and religious facilities;
- (e) restaurants and other food and beverage services (except as a part of Industrial Activities at the facility);
- (f) entertainment and recreational facilities (except as a part of Industrial Activities at the facility);

CHICAGO TITLE INSURANCE CO. 2251135

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS (this "Declaration") is made effective as of December 18, 2002 (the "Effective Date"), by EKCO MANUFACTURING OF OHIO, INC., a Delaware corporation ("Owner"), which Owner claims fee title of the real property located in the City of Massillon, Stark County, Ohio, and more fully described on Exhibit A, attached hereto and made a part hereof (the "Property"), under that certain warranty deed dated December 12, 1995, from Ekco Housewares, Inc. in favor of Owner and recorded on February 21, 1996 as Instrument No. 96007752, Stark County Records.

NOW, THEREFORE, in consideration of the Property, the covenants contained in this Declaration, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner hereby declares the following restrictions for the use of the Property:

1. No existing water wells located on the Property, if any, shall be used for drinking, bathing, washing, or other human contact purposes or for livestock, farming or irrigation so long as the groundwater in, on or under the Property contains any contaminant specified in Exhibit B (the "Groundwater Contaminants") at concentrations above the groundwater cleanup levels specified in Exhibit B with respect to such Groundwater Contaminant (the "Groundwater Standards"). No portion of the Property shall be used for the installation of any new water wells for drinking, bathing, washing, or other human contact purposes or for livestock, farming or irrigation on the Property so long as the groundwater in, on or under the Property contains any Groundwater Contaminant in concentrations above the Groundwater Standards.
2. No portion of the Property shall be used for Residential Activities (defined below) so long as the soils at the Property contain any contaminant specified in Exhibit C (the "Residential Soil Contaminants") at concentrations above the soil cleanup levels specified in Exhibit C with respect to such Residential Soil Contaminant (the "Residential Soil Standards"). For purposes hereof, the term "Residential Activities" shall mean:

- (a) single and multi-family dwelling and rental units;
- (b) day care centers and preschools;
- (c) hotels and motels;
- (d) educational (except as a part of Industrial Activities (defined below) at the facility) and religious facilities;
- (e) restaurants and other food and beverage services (except as a part of Industrial Activities at the facility);
- (f) entertainment and recreational facilities (except as a part of Industrial Activities at the facility);

CHICAGO TITLE INSURANCE CO. 12/30/02

- (g) hospitals and other extended care medical facilities (except as a part of Industrial Activities at the facility); and
- (h) transient or other residential facilities.

For purposes hereof, the term "Industrial Activities" shall mean manufacturing, processing purposes and/or office and warehouse purposes, including, without limitation, production, storage and sales of durable goods and non-food chain products and parking/driveway purposes, and other related purposes incidental thereto.

3. No portion of the Property may be used for activities that will reasonably result in direct contact exposure by humans to soils at the Property that contain any contaminant specified in Exhibit D (the "Industrial Soil Contaminants") at concentrations above the soil cleanup levels specified in Exhibit D with respect to such Industrial Soil Contaminant (the "Industrial Soil Standards").

4. No portion of the Property may be used for activities that will interfere with ongoing remedial actions, operation and maintenance programs, monitoring, or other measures necessary to ensure the effectiveness and integrity of any environmental remediation of the Property, including, without limitation:

- (a) pumping of groundwater that impacts the effectiveness of any on-site pump and treat system used to maintain an inward groundwater gradient from the boundary of the Property to the two existing and active industrial water wells; and

- (b) the installation, construction, removal, or use of any wells, or the excavation of any soil, within those areas of the Property containing any Industrial Soil Contaminant at concentrations above the Industrial Soil Standards.

5. This Declaration shall be recorded in the same manner as a deed in the Office of the Recorder of Stark County, pursuant to ORC Sections 3746.10(C) and 317.

6. If any one or more provisions of this Declaration is found unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

7. This Declaration shall be governed by and interpreted in accordance with the laws of the State of Ohio.

8. All headings used herein are for convenience and shall not be used to interpret or qualify the terms of this Declaration.

9. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public, or for any public use or purpose whatsoever.

Instr: 200212300100053 12/30/2002
P: 3 of 8 F: \$30.00
Rick Campbell 10:42 AM HSC
Stark County Recorder T20020000052

IN WITNESS WHEREOF, the Owner has caused this Declaration to be executed as of the Effective Date.

EKCO MANUFACTURING OF OHIO, INC., a
Delaware corporation

By: Raymond J Kulla
Print Name: Raymond J Kulla
Title: VP

STATE OF OHIO)
COUNTY OF CUYAHOGA) SS

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named Raymond Kulla, the Vice President of EKCO MANUFACTURING OF OHIO, INC., the Delaware corporation that did execute the foregoing instrument, who acknowledged that he/she did sign the foregoing instrument as such officer and that the same is his/her own free act and deed and the free act and deed of such corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, this 18th day of December, 2002.

Carol A. Gasser
NOTARY PUBLIC

My commission expires on:

My Comm. Exps. Sept, 2006

EXHIBIT A

Legal Description of Property

Situated in the City of Massillon, County of Stark and State of Ohio, being part of Sections Six (6) and Seven (7), Township ten (10), (Perry Township) Range Nine (9) (and also known as Outlot #81), bounded and described as follows, to-wit,

Beginning at the intersection of the South Bank of Newman's Creek and the West line of the Baltimore and Ohio Railroad Company's Right of Way, said place of beginning being 464.07 feet Northerly along the West line of said Baltimore & Ohio Railroad Company's Right of Way from its intersection with the Southerly line of Section Six (6); thence Westerly along the South Bank of said Creek Two Hundred Sixty-five (265) feet more or less to a point which is North $89^{\circ} 11' 20''$ West Two Hundred Fifty-Two and Thirty-six Hundredths (252.36) feet from the place of beginning, thence $71^{\circ} 10'$ West Two Hundred Thirty-Two and Five tenths (232.5) feet to an iron stake in the South Bank of said Creek, thence North $56^{\circ} 11'$ West Three Hundred Fifty-four (354) feet to an iron stake; thence North $44^{\circ} 40'$ West Four Hundred Fifteen and Two Tenths (415.2) feet to an iron stake in the middle of said Creek; thence South 81° West Fifty-four and Three Tenths (54.3) feet to an iron stake in the middle of said Creek One Hundred Eighteen (118) feet Easterly from the middle of the Right of Way (66 Ft. wide) of the Pittsburgh, Ft. Wayne & Chicago Railroad measured at Right angles thereto; thence South $33^{\circ} 43'$ East along the Northeasterly line of land conveyed to last named Railroad by deed dated November 26, 1892, recorded in Stark County Records Vol. 295, Page 59, Five Hundred Ten (510) feet to an iron stake; thence South $62^{\circ} 42'$ West One Hundred Twenty-five (125) feet along land conveyed by said deed Vol. 295, Page 59, to an iron stake Fifty (50) feet from the center line of the main Right of Way (Sixty-Six (66) feet wide) of said last named Railroad measured at right angles thereto; thence South $27^{\circ} 18'$ East still along the line of lands so conveyed by deed recorded in the Stark County Records, Vol. 295, Page 59, and parallel to the said main Right of Way of said last named Railroad about Five Hundred Seventy-nine and Nine Tenths (579.9) feet to the South line of Section Six (6); thence North $87^{\circ} 39' 5''$ West along Section line Nineteen and Fifty-six Hundredths (19.56) feet; thence South $27^{\circ} 18'$ East parallel to and Thirty-three (33) feet distant from, the middle of the Right of Way of said last named Railroad, measured at right angles thereto and along the Northeasterly line of said Right of Way, Nineteen (19) feet; thence continuing Southeasterly along the Northeasterly line of the Right of Way of said last named Railroad, (deed dated March 3, 1854 to the Ohio & Pennsylvania Railroad Co., for the South part of said Right of Way being recorded in Stark County of Records, Vol. 64, Page 118), Twelve Hundred Fifty-six and Eleven Hundredths (1256.11) feet to its intersection with the Westerly line of the Right of Way of the Baltimore & Ohio Railroad (formerly the Cleveland Lorain and Wheeling Railroad); thence Northerly Eleven Hundred Sixty-one and Eighty-two Hundredths (1161.82) feet along the Westerly line of the Right of Way of the Baltimore & Ohio Railroad as conveyed to The Lake Shore & Tuscarawas Valley Railway Company by deed dated October 15, 1873, recorded in Stark County Records, Volume 135, Page 44, parallel to and distant Thirty (30) feet Westerly from the center line of its Right of Way (Sixty (60) feet wide) to the North line of Section Seven (7), which is also the South line of Section Six (6); thence West along said Section line about Six (6) feet to an iron stake in the westerly line of the Right of Way of the Baltimore & Ohio Railroad (Sixty-six (66) feet wide), formerly Right of Way of The Cleveland, Lorain & Wheeling Railroad Company, thence Northeasterly along the Westerly line

Instr: 200212200100053 12/30/2002
P: 5 of 8 F: \$30.00
Rick Campbell 10:42AM NISC
Stark County Recorder T20020050052

of the Right of Way of said last named Railroad about Four Hundred Sixty-four and Seven Hundredths (464.07) feet to the place of beginning containing about Seventeen and Fifty-seven Hundredths (17.57) acres, to be the same more or less, but subject to all legal highways and water rights.

The above premises comprise a part of the largest of three lots numbered 12 in Earl's Out-Lots, also known and designated in deeds in the chain of title as Lot Number 13 in Earl's Out-Lots, situated in Section 6, Township 10, Range 9; the plat of said Out-Lots being of record in the Stark County Recorder's Office in Plat Book Volume 1, page 31; also parts of Lots 7 and 6 in the Amicable Partition of part of West fractional Section 7, Township 10, Range 9, made by William S. Wetmore, Richard S. Fay and Executors of the Estate of Amos Binney, deceased, on October 17, 1848, a memorandum and plat of which partition is of record in the Stark County Recorder's Office in Volume 40, Page 582. The whole of the above premises, in a renumbering of lots in the City of Massillon, dated February 6, 1929, recorded in the Recorder's Office of Stark County, Schedule No. 3, Page 494, having been renumbered Out-Lot No. 81.

Street Address: 359 State Avenue Extension, N.W., Massillion, Ohio 44646

Prior Deed Reference: Instrument No. 96007752, Stark County Records

Permanent Parcel No.: 06-09319

Instr: 200212300100003 12/30/2002
P: 6 of 8 F: \$39.00
Rick Campbell 10:42AM MISC
Stark County Recorder T20020056052

EXHIBIT B

Groundwater Standards

<u>Groundwater Contaminant</u>	<u>Groundwater Cleanup Level (ug/l)</u>
1,1 - dichloroethane	810
1,1 - dichloroethylene	7
cis - 1,2 - dichloroethylene	70
trans - 1,2 - dichloroethylene	100
1,1,1 - trichloroethane	200
Trichloroethylene	5
Vinyl chloride	2



Instr: 200212300100003
P: 7 of 8 F: 530.00 12/30/2002
Rick Campbell 10:42AM HISC
Stark County Recorder T200200000002

EXHIBIT C

Residential Soil Standards

<u>Soil Contaminant</u>	<u>Soil Cleanup Level (ug/kg)</u>
1,1 – dichloroethylene	54
1,2 – dichloroethylene (total)	43,000
1,1,1 – trichloroethane	630,000
Trichloroethylene	2,800

Instr: 200212300100053 12/30/2002
P: 8 of 8 F: \$30.00
Rick Campbell 10:42AM MISC
Stark County Recorder T20020000052

EXHIBIT D

Industrial Soil Standards

<u>Soil Contaminant</u>	<u>Soil Cleanup Level (ug/kg)</u>
1,1 – dichloroethylene	120
1,2 – dichloroethylene (total)	150,000
1,1,1 – trichloroethane	1,400,000
Trichloroethylene	6,100

Christine Liszewski

01/29/03 03:44 PM

To: Kenneth Bardo/R5/USEPA/US@EPA
Subject: Fwd: Recorded Declaraton

FYI

----- Forwarded by Christine Liszewski/R5/USEPA/US on 01/29/03 03:43 PM -----



Keely O'Bryan
<keely.obryan@thompsonhine.com>

To: Christine Liszewski cc: Michael Cyphert
Subject: Fwd: Recorded Declaraton

01/29/03 03:26 PM

Christine,

Attached is the recorded deed restriction for the World Kitchen facility in Massillon, Ohio.
Please let me know if you have any questions.

Keely O'Bryan

Keely J. O'Bryan, Esq.
Thompson Hine, LLP
3900 Key Center
127 Public Square
Cleveland, OH 44114
(p)216/566-5686
(f)216/566-5800
keely.obryan@thompsonhine.com

----- Message from "CAMPBELL, KIMBERLY" <campbellki@ctt.com> on Wed, 29 Jan 2003 04:08:53 -0500 -----

To: <david.hales@thompsonhine.com>

Subject: Recorded Declaraton

Please open the attached document.
This document was sent to you using an HP Digital Sender.

Sent by:	CAMPBELL, KIMBERLY <campbellki@ctt.com>
Number of pages:	9
Document type:	B/W Document
Attachment File Format:	Adobe PDF

To view this document you need to use the Adobe Acrobat Reader.
For free copy of the Acrobat reader please visit:

<http://www.adobe.com>

For more information on the HP Digital Sender please visit:

<http://www.digitalsender.hp.com>



Recorded.pdf

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS (this "Declaration") is made effective as of October 4, 2002 (the "Effective Date"), by ECKO MANUFACTURING OF OHIO, INC., a Delaware corporation ("Owner"), which Owner claims fee title of the real property located in the City of Massillon, Stark County, Ohio, and more fully described on Exhibit A, attached hereto and made a part hereof (the "Property"), under that certain warranty deed dated December 12, 1995, from Ecko Housewares, Inc. in favor of Owner and recorded on February 21, 1996 as Instrument No. 96007752, Stark County Records.

NOW, THEREFORE, in consideration of the Property, the covenants contained in this Declaration, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner hereby declares the following restrictions for the use of the Property:

1. No existing water wells located on the Property, if any, shall be used for drinking, bathing, washing, or other human contact purposes or for livestock, farming or irrigation so long as the groundwater in, on or under the Property contains any contaminant specified in Exhibit B (the "Groundwater Contaminants") at concentrations above the groundwater cleanup levels specified in Exhibit B with respect to such Groundwater Contaminant (the "Groundwater Standards"). No portion of the Property shall be used for the installation of any new water wells for drinking, bathing, washing, or other human contact purposes or for livestock, farming or irrigation on the Property so long as the groundwater in, on or under the Property contains any Groundwater Contaminant in concentrations above the Groundwater Standards.

2. No portion of the Property shall be used for Residential Activities (defined below) so long as the soils at the Property contain any contaminant specified in Exhibit C (the "Residential Soil Contaminants") at concentrations above the soil cleanup levels specified in Exhibit C with respect to such Residential Soil Contaminant (the "Residential Soil Standards"). For purposes hereof, the term "Residential Activities" shall mean:

- (a) single and multi-family dwelling and rental units;
- (b) day care centers and preschools;
- (c) hotels and motels;
- (d) educational (except as a part of Industrial Activities (defined below) at the facility) and religious facilities;
- (e) restaurants and other food and beverage services (except as a part of Industrial Activities at the facility);
- (f) entertainment and recreational facilities (except as a part of Industrial Activities at the facility);

- (g) hospitals and other extended care medical facilities (except as a part of Industrial Activities at the facility); and
- (h) transient or other residential facilities.

For purposes hereof, the term "Industrial Activities" shall mean manufacturing, processing purposes and/or office and warehouse purposes, including, without limitation, production, storage and sales of durable goods and non-food chain products and parking/driveway purposes, and other related purposes incidental thereto.

3. No portion of the Property may be used for activities that will reasonably result in direct contact exposure by humans to soils at the Property that contain any contaminant specified in Exhibit D (the "Industrial Soil Contaminants") at concentrations above the soil cleanup levels specified in Exhibit D with respect to such Industrial Soil Contaminant (the "Industrial Soil Standards")

4. No portion of the Property may be used for activities that will interfere with ongoing remedial actions, operation and maintenance programs, monitoring, or other measures necessary to ensure the effectiveness and integrity of any environmental remediation of the Property, including, without limitation:

- (a) pumping of groundwater that impacts the effectiveness of any on-site pump and treat system used to maintain an inward groundwater gradient from the boundary of the Property to the two existing and active industrial water wells; and

- (b) the installation, construction, removal, or use of any water wells, or the excavation of any soil in connection therewith, within those areas of the Property containing any Industrial Soil Contaminant at concentrations above the Industrial Soil Standards.

5. This Declaration shall be recorded in the same manner as a deed in the Office of the Recorder of Stark County, pursuant to ORC Sections 3746.10(C) and 317.

6. If any one or more provisions of this Declaration is found unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

7. This Declaration shall be governed by and interpreted in accordance with the laws of the State of Ohio.

8. All headings used herein are for convenience and shall not be used to interpret or qualify the terms of this Declaration.

9. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public, or for any public use or purpose whatsoever.

IN WITNESS WHEREOF, the Owner has caused this Declaration to be executed as of the Effective Date.

ECKO MANUFACTURING OF OHIO, INC., a
Delaware corporation

By: _____
Print Name: _____
Title: _____

STATE OF OHIO)
) SS
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named _____, the _____ of ECKO MANUFACTURING OF OHIO, INC., the Delaware corporation that did execute the foregoing instrument, who acknowledged that he/she did sign the foregoing instrument as such officer and that the same is his/her own free act and deed and the free act and deed of such corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, this _____ day of October, 2002.

NOTARY PUBLIC

My commission expires on:



State of Ohio Environmental Protection Agency

Northeast District Office

2110 E. Aurora Road
Twinsburg, Ohio 44087-1969

TELE (330) 425-9171 FAX (330) 487-0769

Bob Taft, Governor
Christopher Jones, Director

January 14, 2000

RE: EKCO MANUFACTURING OF OHIO
(aka EKCO HOUSEWARES, INC)
OHD 045 205 424
STARK COUNTY

Mr. Ken Bardo
US EPA Region V
DE-9J
77 West Jackson Blvd
Chicago, IL 60604-3590

Dear Mr. Bardo:

Attached, please find a list of the documents at Ohio EPA's Northeast District Office in regards to EKCO Housewares, OHD 045 205 424, Massillon, Stark County, Ohio. Please let me know if you need copies of any of these documents and arrangements can be made.

If you have any questions, or if we can be of further assistance, please feel free to contact either Mr. Frank Popotnik or me at (330) 963-1200.

Sincerely,

Karen L. Nesbit
Division of Hazardous Waste Management

KLN:cl

Enclosure

pc: Frank Popotnik, DHWM, NEDO
Linda Neumann, DHWM, CO (w/enclosures)



Division of Hazardous Waste Management Files for

EKCO HOUSEWARES CO MASSILLON DIV

OHD045205424

Printed: 1/13/2000

Title of report	Date	Location	Volume
DRAFT RFI REPORT	8/1/1992	M-062	1
RFI/CMS WORK PLAN	6/1/1989	M-148	1
LAGOON CLOSURE CERTIFICATION VOL I	7/1/1994	C-273	1
LAGOON CLOSURE CERTIFICATION VOL II	7/1/1994	C-274	1
ANNUAL GW MONITORING REPORT	2/1/1995	G-075	1

Title of report	Date	Location
VOLATILE ORGANIC COMPOUND ANALYSES SUMMARY REPORT	6/26/1984	ARCH 052
CLOSURE PLAN DRAFT CONFIDENTIAL	1/1/1988	ARCH 052
PUMP TEST TECHNICAL MEMO DRAFT	11/21/1988	ARCH 052
QA MANAGEMENT PLAN FOR IMPLEMENTATION OF GWQA	11/10/1988	ARCH 052
QA MANAGEMENT PLAN	9/1/1988	ARCH 052
GW ASSESSMENT RPT PHASE 2	5/8/1989	ARCH 052
EVAL OF STABILIZATION PROCESSES FOR CLOSURE OF SURFACE IMPOUNDMENT	6/1/1990	ARCH 052
CP VOL 1	7/1/1992	ARCH 052
CP VOL 2 APPENDICES	7/1/1992	ARCH 052
CP VOL 1 DRAFT	12/1/1991	ARCH 052
GWQAP	3/1/1988	ARCH 052
SOIL SAMPLING & LAB ANALYSIS 1987	6/24/1987	ARCH 052
TEST PLAN TO EVALUATE STABILIZATION PROCESSES FOR CLOSURE OF SURFACE IMPOUNDMENT	12/1/1989	ARCH 052
CP VOL 2 DRAFT	8/1/1988	ARCH 052
QAPP DRAFT	6/1/1988	ARCH 052
GW MONITORING ANNUAL REPORT 1991	2/1/1991	ARCH 052
GW MONITORING ANNUAL REPORT 1994	2/1/1994	ARCH 052
GW MONITORING SUPPL ANNUAL REPORT 1993	3/1/1994	ARCH 052
GW MONITORING ANNUAL REPORT 1992	2/1/1993	ARCH 052
GW MONITORING ANNUAL REPORT 1991	3/2/1992	ARCH 052
CP VOL 2 APPENDICES DRAFT	1/1/1992	ARCH 052
GW MONITORING SUPPL ANNUAL REPORT 1992	3/1/1993	ARCH 052
WESTON REPLY TO THE CME	1/14/1992	ARCH 052
CP VOL 2 APPENDICES DRAFT	12/1/1997	ARCH 052

RECEIVED
WMO RECORD CENTER
MAR 09 1995

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA)	JUDGE PAUL R. MATIA
)	
Plaintiff)	CASE NO. 5:92CV1245
)	
-vs-)	
)	
EKCO HOUSEWARES, INC.)	
)	
Defendant)	

MEMORANDUM OF DEFENDANT EKCO HOUSEWARES, INC.
IN SUPPORT OF ITS MOTION TO AMEND THE FINDINGS
OF FACT AND TO AMEND THE JUDGMENT ACCORDINGLY

Defendant Ekco Housewares, Inc. ("Ekco") respectfully submits this memorandum in support of its motion, pursuant to Fed. R. Civ. P. 52(b), to amend the findings of fact and to amend the judgment accordingly.

On January 28, 1994, this Court issued its Findings Of Fact and Conclusions Of Law in this matter and entered judgment against Ekco in the amount of \$4,606,000, a penalty of \$1,000 per day for each violation found by the Court.

The purpose of this motion is to call the Court's attention to an error in the calculation of the penalty associated with the violations of the post-closure care requirements found by the Court. The Court's Finding of Fact No. 62 states that Ekco remained in violation of the requirement to establish financial assurance for post-closure care until July 1992, when it submitted a proposed closure plan calling for off-site removal of the hazardous waste in the surface impoundment (a "clean closure"). Because a clean closure requires no post-closure care, the Court correctly ruled that no post-closure financial assurance is required when a clean closure is proposed. The evidence, however, shows that a clean closure was proposed for Ekco's surface impoundment almost one year before the July, 1992 date identified by the Court.

Defendant's Exhibit M (attached as Exhibit 1 to this memorandum) is an August 29, 1991 letter from American Home Products Corporation ("AHP") to Ohio EPA informing the agency of the closure strategy that AHP proposed for the Ekco Plant. AHP submitted that letter to Ohio EPA pursuant to an agreement calling for AHP to submit its closure strategy for approval before submitting a full closure plan. See Defendant's Ex. K (Ex. 2 to this Memorandum); Byer Testimony 533:25-535:10. The August 29, 1991 letter informed Ohio EPA of AHP's decision to stabilize the wastes in the surface impoundment and to transport them off-site. The letter concluded that "by completely removing the waste materials in the lagoon, AHP will likely be able to

secure clean closure. . . ." Thus, a clean closure had been proposed for the surface impoundment by August 29, 1991 and no financial assurances for post-closure care were required after that date.

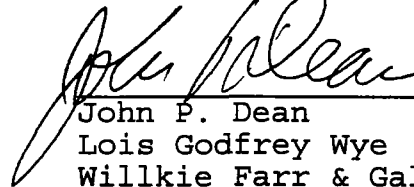
A Rule 52(b) motion is the appropriate mechanism for resolving this issue. Rule 52(b) permits a party to bring a "'manifest error of fact'" to a court's attention. See, e.g., Renfro v. City of Emporia, 732 F. Supp. 1116, 1117 (D. Kan. 1990), aff'd, 948 F.2d 1529 (10th Cir. 1991), cert. dismissed, 112 S. Ct. 1310 (1992), quoting Dow Chem. Pac. Ltd. v. Rascator Maritime, S.A., 609 F. Supp. 451, 452-53 (S.D.N.Y. 1984), vacated in part on other grounds, 782 F.2d 329 (2d Cir. 1986). This motion is being filed within the ten day limit specified in the rule.¹ Accordingly, this Court may grant Ekco the relief requested.

¹ Judgment was entered on January 28, 1994. This motion is being filed on February 11, 1994. With intervening weekend days excluded pursuant to Fed. R. Civ. P. 6(a), February 11 is ten days after January 28.

CONCLUSION

Ekco respectfully requests this Court to amend Finding 62 to state that the post-closure violations lasted from August 15, 1988 until no later than August 29, 1991, a total of 1,109 days, to amend Finding 64 to find the total number of penalty days to be 4,270 days, and to amend the judgment to provide a penalty of \$4,270,000.

Respectfully submitted,



John P. Dean
Lois Godfrey Wye
Willkie Farr & Gallagher
1155 21st Street, N.W.
Washington, D.C. 20036
(202) 328-8000

Counsel for Defendant
Ekco Housewares, Inc.



would this letter be an acceptable expression of intent by an o/o to clean close a facility.

AMERICAN HOME PRODUCTS CORPORATION

685 THIRD AVENUE
NEW YORK, N.Y. 10017
(212) 678-6000

August 29, 1991

Mr. Paul Vandermeer
Ohio Environmental Protection Agency
Division of Solid and Hazardous Waste Management
P.O. Box 1049, 1800 WaterMark Drive
Columbus, OH 43266-0149

Re: Ecco Housewares
Case No. 89-HW-0008

Dear Mr. Vandermeer:

American Home Products Corporation (AHP) has used OEPA's June 28, 1991 extension for submittal of a revised closure plan to further investigate all feasible alternatives for addressing the Ecco lagoon. This letter presents AHP's general strategy for closure of the lagoon.

AHP has studied various feasible closure alternatives:

1. Stabilization of waste materials within the lagoon with on-site disposal;
2. Stabilization of waste materials on-site but outside of the lagoon with on-site disposal in the lagoon;
3. Excavation of waste materials within the lagoon for transport to off-site hazardous waste treatment and disposal facility;
- 4A. Stabilization of waste materials within the lagoon with transport to off-site hazardous waste disposal facility;
- 4B. Stabilization of waste materials within the lagoon with transport to off-site solid waste disposal facility;
- 5A. Stabilization of waste materials on-site but outside the lagoon with transport to off-site hazardous waste disposal facility; and
- 5B. Stabilization of waste materials on-site but outside the lagoon with transport to off-site solid waste disposal facility.

228

*sub-souls
agreed
& contained
system
con*

After conducting an in-depth review of the above options, AHP has selected option 4B. AHP has tentatively chosen BFI - Waste.

CASE NO. 5.92CV 1245
DEFENDANT'S
EXHIBIT M

*113
228 - must incorporate
to show intent. (ent)*

Ecko Housewares
Case No. 89-HW-0008
August 29, 1991

System's landfill located in Massillon, Ohio, as the solid waste landfill. AHP will consult with the Twinsburg Field Office's Solid Waste Division before making a final decision on BFI.

AHP believes Option 4B to be the most feasible and permanent of the options researched. AHP intends to fully treat and excavate the lagoon materials, thereby removing any potential source for groundwater contamination. As discussed between you, Bob Zollner and me on August 28, 1991, by completely removing the waste materials in the lagoon, AHP will likely be able to secure clean closure, and incorporate any requisite groundwater monitoring relative to the lagoon into the on-going RCRA Corrective Action.

As conveyed to the Assistant Attorney General on July 22, 1991, AHP will submit a closure plan for the lagoon within sixty (60) days following receipt of OEPA's approval of the above closure strategy.

Please call me at (212) 878-6098 with your concerns or questions.

Very truly yours,

Monte W. Leek
Project Manager
Environmental Projects

cc: Harold (Butch) Byar, Weston
Geraldine Moss, Esq., AHP
Harold (Pat) J. Hintz, Jr., Ph.D, AHP
Robert Zollner, AHP

WILLKIE FARR & GALLAGHER

Washington, DC
New York
London
Paris

July 22, 1991

Retanio Aj Rucker, Esquire
Assistant Attorney General
State of Ohio
State Office Tower
30 East Broad Street
Columbus, Ohio 43266-0410

Re: In re Ekco Housewares, Inc.
Case No. 89-HW-0008

Dear Retanio:

This will confirm our conversation today regarding submission of a closure plan for the above-referenced site.

Our respective technical representatives have agreed that AHP shall submit a general closure strategy to EPA for review by August 31, 1991. AHP shall submit a closure plan within sixty (60) days following receipt of EPA's approval of the closure strategy.

Should you have any questions, please call me at your convenience.

Very truly yours,


Steve Oster

cc: Geraldine A. Moss, Esquire
Harold G. Byer, Jr.

Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036-3384
202 328 8000

Telex: RGA 228800
W 1 8
Fax: 2

CASE NO. 5.92CV 1245
DEFENDANT'S
EXHIBIT K



State of Ohio Environmental Protection Agency

Northeast District Office

2110 E. Aurora Road
Twinsburg, Ohio 44087-1969
(616) 425-9171
X (216) 487-0769

TO GO ON: ☒ RCRIS ☐ FO LOG ☐ USEPA LOG ☐ CJ LOG ☐ FILE
ENTERED: ☒ RCRIS ☐ FO LOG ☐ USEPA LOG ☐ CJ LOG ☐ ONLY
RCRIS ENTRY CODES: (EVALUATION) _____ (ENFORCEMENT) _____
CEI ☐ CI ☐ OTHER _____ INITIAL NOV ☐ FOLLOW-UP NOV ☐
FULL RTC ☒ PARTIAL RTC ☐ LDR ☐ SENT TO USEPA: YES ☐ NO ☐

George V. Voinovich
Governor

C.2

March 8, 1994

RE: EKCO HOUSEWARES, INC.
STARK COUNTY
OHD 045 205 424

Mr. Paul Tag
Ekco Housewares
359 State Avenue, NW
P.O. Box 560
Massillon, OH 44658

RECEIVED
WMD RECORD CENTER
OCT 04 1994

Dear Mr. Tag:

On February 28, 1994, Ohio EPA received Ekco Housewares response to the Ohio EPA's February 18, 1993 Notice of Violation letter. ← *Already Rtc'd*

Based on the documentation provided, it appears that Ekco has adequately addressed the violation cited in the February 18, 1994 Notice of Violation letter.

Please note: at this time, Ohio EPA is not asking for Ekco Housewares to perform closure of the outside drum accumulation area where the one drum was accumulated for greater than 90 days. It is Ohio EPA's understanding from speaking with representatives of Ekco, the drum accumulation area will soon be eliminated due to the waste minimization occurring at the facility. Ohio EPA has already sent Ekco the May 1991 Closure Guidance to assist in meeting the generator closure performance standards in OAC 3745-66-11. Ekco shall notify Ohio EPA when use of this accumulation area ceases, and retain on-site all documentation demonstrating that the closure performance standards have been met.

Failure to cite specific violations and deficiencies in this communication does not relieve Ekco from complying with all applicable rules and regulations.

Please be advised that any instances of non-compliance can continue as subjects of pending or future enforcement actions.

RECEIVED
OHIO EPA

MAR 10 94

DIVISION of
HAZARDOUS WASTE MGT.

Page - 2 -
Mr. Paul Tag
March 8, 1994

If you should have any problems or questions, please contact either Harry Courtright or me at (216) 963-1200.

Sincerely,



Karen L. Nesbit
Environmental Scientist
Division of Hazardous Waste Management

KLN.wk

cc: Harry Courtright, DHWM, NEDO
~~Laurie Stevenson, DHWM, CO~~



State of Ohio Environmental Protection Agency

Northeast District Office

2110 E. Aurora Road
Twinsburg, Ohio 44087-1969
(216) 425-9171
FAX (216) 487-0769

TRACKING - OHWM, CM&ES
TO GO ON: ☒ BCRIS ☐ FO LOG ☐ USEPA LOG ☐ CJ LOG ☐ FILE
ENTERED: ☒ BCRIS ☐ FO LOG ☐ USEPA LOG ☐ CJ LOG ☐ ONLY
RCRIS ENTRY CODES: (EVALUATION) 021 (ENFORCEMENT) 022
CEI ☐ CI ☐ OTHER ☐ INITIAL NOV ☐ FOLLOW-UP NOV ☐
FULL RTC ☐ PARTIAL RTC ☐ LDR ☐ SENT TO USEPA: YES ☐ NO ☐

oinovich
Governor

February 18, 1994

RE: EKCO HOUSEWARES, INC.
STARK COUNTY
NOTICE OF VIOLATION
ID #

Mr. Paul Tag
Ekco Housewares
359 State Avenue, NW
P.O. Box 560
Massillon, OH 44658

04D 045205424

RECEIVED
WHD RECORD CENTER

OCT 04 1994

Dear Mr. Tag:

On February 15, 1994, Ohio EPA personnel were at the Ekco Housewares facility in Massillon, Ohio to conduct a Comprehensive Ground Water Monitoring Evaluation (CME) inspection. Rich Kurlich represented the Division of Drinking and Ground Water and I represented the Division of Hazardous Waste Management. Weston Associates were conducting the sampling activities for Ekco and American Home Products. Ekco was represented by Paul Penz.

During the inspection, Ohio EPA inspected the outside drum accumulation area on the north side of the building. An inspection of the drums revealed a 55-gallon drum of "Booth Floors" (D001, F003, F005) with an accumulation date of "10/09/93". This drum of hazardous waste has been accumulated on-site for greater than 90 days as allowed for generators of hazardous waste without a permit. Ekco Housewares is therefore in violation of the Ohio Revised Code Chapter 3734.02 E and F; the facility has stored hazardous waste at a facility without first obtaining a permit and established a hazardous waste facility without first obtaining a permit. This is also in violation of the Ohio Administrative Code Rule 3745-52-34; accumulating hazardous waste longer than 90 days without a permit.

Ekco Housewares shall dispose of the drum of hazardous waste at a permitted treatment, storage and disposal facility on or before February 28, 1994. Ekco shall submit a copy of the manifest documenting that the drum has been disposed of properly to this office on or before March 4, 1994.

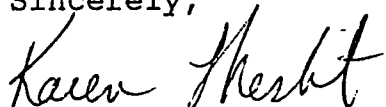
Failure to cite specific violations and deficiencies in this communication does not relieve Ekco from complying with all applicable rules and regulations.

Page - 2 -
Mr. Paul Tag
February 18, 1994

Please be advised that any instances of non-compliance can continue as subjects of pending or future enforcement actions.

If you should have any problems or questions, please contact either Harry Courtright or me at (216) 963-1200.

Sincerely,



Karen L. Nesbit
Environmental Scientist
Division of Hazardous Waste Management

KLN.wk

cc: Harry Courtright, DHWM, NEDO
Laurie Stevenson, DHWM, CO
Sally Averill, USEPA, Region V

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
94 JAN 28 PM 4:32
CLERK OF COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA

Plaintiff

-vs-

EKCO HOUSEWARES, INC.

Defendant

JUDGE PAUL R. MATIA

CASE NO. 5:92CV1245

JUDGMENT ENTRY

This action came on for trial before the Court upon the facts without a jury from October 19, 1993, to October 22, 1993, and the issues having been duly tried and Findings of Fact and Conclusions of Law having been filed,

It is Ordered and Adjudged that plaintiff, the United States of America, recover of defendant, Ekco Housewares, Inc., the sum of Four Million Six Hundred Six Thousand Dollars (\$4,606,000.00), and its costs of action.

Paul R. Matia
UNITED STATES DISTRICT JUDGE

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FEB 01 1994

U.S. EPA, Region 5
Office of Regional Counsel

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
JUN 28 PM 4:25
CLERK OF COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA

Plaintiff

-vs-

EKCO HOUSEWARES, INC.

Defendant

JUDGE PAUL R. MATIA

CASE NO. 5:92CV1245

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

FINDINGS OF FACT

1. Both before and after the effective date of the regulations promulgated pursuant to the Resource Conservation and Recovery Act, as amended ("RCRA"), 42 U.S.C. §§ 6901, et seq., which is November 19, 1980, and until at least June 5, 1984, Ekco discharged wastewaters, containing hazardous wastes, from its operations to the surface impoundment located at the Massillon facility and treated, stored or disposed of those hazardous wastes in the surface impoundment located at its facility.

2. The RCRA financial responsibility requirements and the "financial responsibility requirements" referred to in Paragraph B(5) of the Partial Consent Agreement and Order ("PCAO") include the regulatory requirements for financial assurances for closure (40 C.F.R. § 265.143), financial assurances for post-closure care (40 C.F.R. § 265.145) and liability coverage (40 C.F.R. § 265.147).

3. A facility owner or operator, such as defendant, who treats, stores, or disposes of hazardous wastes after

November 19, 1980, is obligated to maintain liability coverage for personal injury and property damage resulting from sudden and nonsudden accidental occurrences resulting from operations of the hazardous waste management unit, such as defendant's surface impoundment.

4. The obligation of the owner and operator of a treatment, storage or disposal facility to maintain liability coverage does not cease until final closure of the hazardous waste unit has been completed, pursuant to an approved plan, and the appropriate agency approves the closure and notifies the owner operator that the obligation has ceased.

5. A purpose of the liability coverage provision is to assure compensation of third persons who may suffer personal injury or property damage arising from the operation of the hazardous waste facility.

6. "Operation" of a hazardous waste facility consists of any sort of hazardous waste treatment, storage or disposal activity at that particular hazardous waste management unit.

7. A hazardous waste disposal unit is one in which hazardous waste is placed in or on the land or water and at which hazardous waste will remain after closure.

8. If hazardous waste remains after closure, including as a result of leaching into the groundwater, the unit is a disposal unit.

9. An example of a hazardous waste disposal unit is a surface impoundment.

10. This Court has found, and Ekco does not dispute, that Ekco discharged hazardous waste to the surface impoundment between 1980 and 1984, after the effective date of RCRA, with the intent that at least some of the waste would be permanently disposed of there. The August 1988 closure plan, submitted by Ekco to U.S. EPA and to Ohio EPA, proposed to treat the surface impoundment as a disposal unit. In July 1992, Ekco submitted a plan which proposed to "clean close" the unit and remove the hazardous waste. Thus, from at least August 1988 until at least July 1992, the surface impoundment was a "disposal" unit subject to the requirements of 40 C.F.R. § 265.145 and Ohio Administrative Code ("O.A.C.") § 3745-66-45.

11. The fact that Ekco ceased the discharge of hazardous waste into the surface impoundment prior to November 8, 1985 (the effective date of the loss of interim status provisions enacted as part of the 1984 Hazardous and Solid Waste Amendments to RCRA ("1984 Amendments")), does not affect the status of the surface impoundment or the applicability of the financial responsibility regulations.

12. Facility owners or operators, such as Ekco, who "operated" a hazardous waste "treatment, storage or disposal" unit after November 19, 1980, are obligated to establish and maintain liability coverage for personal injury and property damage until the unit was closed pursuant to the applicable regulation. Such persons who operate "disposal" units are also obligated to

maintain financial assurance for post-closure care of the disposal unit.

13. In order for an owner or operator to lawfully operate a hazardous waste management unit after November 19, 1980, the effective date of applicable RCRA regulations, that owner or operator must have obtained a permit or achieved "interim status."

14. A facility at which a hazardous waste management unit is used to treat, store or dispose of hazardous waste after the effective date of RCRA is subject to the standards set forth at 40 C.F.R. Part 265, and those standards apply even to the owners and operators who did not achieve interim status or obtain a permit.

15. By November 19, 1980, Ekco did not submit to EPA "Part A" of its application for a permit to treat, store or dispose of hazardous wastes as required by Section 3005 of RCRA, 42 U.S.C. § 6925, and 40 C.F.R. § 270.10. Because the "Part A" application was not submitted by November 19, 1980, Ekco did not receive "interim status" as set forth under § 3005 of RCRA, 42 U.S.C. § 6925.

16. Congress mandated that EPA establish financial responsibility standards for owners and operators of hazardous waste management units. The financial responsibility requirements under RCRA became effective in July 1982.

17. In 1984, Congress passed the Hazardous and Solid Waste Amendments to RCRA, in part due to concerns over significant levels of noncompliance with the financial responsibility

regulations. The 1984 amendments essentially added a statutory sanction to ongoing regulatory violation.

18. The 1984 amendments to RCRA did not change the applicability of the financial responsibility requirements. The 1984 amendments emphasized the importance of full compliance with the financial responsibility requirements. An owner or operator could only retain interim status by certifying compliance with the financial responsibility requirements and groundwater monitoring.

19. The liability coverage requirements apply to unclosed facilities even if no further discharge of hazardous waste occurred there after the 1984 RCRA amendments.

20. The requirement to establish financial assurance for closure is viewed by EPA as very important. Liability coverage is an important component of the RCRA regulations. It is designed to protect against the risk intrinsically associated with hazardous waste management and provide protection to members of the general public for unexpected or unanticipated occurrences which could affect health or property.

21. The State of Ohio Environmental Protection Agency ("OEPA") is authorized to administer aspects of the RCRA hazardous waste program in the State of Ohio in lieu of the federal RCRA program.

22. OEPA's administration of the RCRA program includes monitoring compliance with federal consent agreements entered into under RCRA.

23. Pursuant to a Memorandum of Understanding, dated July 22, 1988, between the U.S. EPA and the State of Ohio, OEPA was authorized to oversee certain aspects of the RCRA program in Ohio, including the financial responsibility requirements, prior to June 30, 1989.

24. On June 30, 1989, the State of Ohio received authorization, pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, to administer and enforce a hazardous waste management program under RCRA. As of June 30, 1989, the State of Ohio was fully authorized to administer certain aspects of the hazardous waste management program under RCRA.

25. On November 5, 1986, EPA filed an Administrative Complaint, Findings of Violation and Compliance Order, Docket No. V-W-87-R-008, against Ekco.

26. Among the Findings of Violation was Ekco's failure to comply with the financial responsibility requirements under 40 C.F.R. §§ 265.140-150.

27. On or about November 4, 1987, U.S. EPA and Ekco entered into a Partial Consent Agreement and Order ("PCAO") which partially resolved the November 5, 1986, Administrative Complaint.

28. The PCAO was executed by a duly authorized officer of Ekco. The PCAO was not executed by anyone from, on behalf of, or affiliated with American Home Products Corporation ("AHP").

29. Pursuant to the terms of Paragraph B(5) of the PCAO, Ekco was required to "[c]omply with the financial responsibility requirements for closure until closure has been

certified, pursuant to 40 C.F.R. §§ 265.140 through 265.151, at the time of the submission of the closure plan for the surface impoundment pursuant to Paragraph B(1)."

30. Paragraph B(1) of the PCAO required Ekco to submit a closure plan within 90 days of the effective date of the PCAO.

31. Pursuant to the terms of the PCAO, Ekco was unambiguously obligated to provide financial assurance for closure under 40 C.F.R. § 265.143, financial assurance for post-closure care under 40 C.F.R. § 265.145, and liability coverage under 40 C.F.R. § 265.147 upon the submission of the closure plan.

32. From the effective date of the PCAO until June 30, 1989, Ekco was required to comply with the applicable Federal regulations found at 40 C.F.R. §§ 265.143, 145 and 147. From and after June 30, 1989, defendant was required to comply with the State of Ohio hazardous waste regulations found at O.A.C. §§ 3745-66-43, 45 and 47.

33. In addition to monitoring Ekco's compliance with the Ohio regulations, Ohio EPA was monitoring Ekco's compliance with the RCRA financial responsibility requirements pursuant to the PCAO.

34. In March 1988, Ohio EPA notified Ekco of its failure to comply with the State of Ohio financial responsibility requirements.

35. Ekco did not comply as a result of the March 1988 notice.

36. Ekco submitted a closure plan to U.S. EPA and OEPA in August 1988. The closure plan contained a proposal that the wastes in the impoundment remain in place and that the impoundment be treated as a "disposal" unit.

37. At the time of submission of the closure plan, despite the requirements of the PCAO, neither Ekco, nor anyone in its behalf, submitted documentation of compliance with any of the financial responsibility requirements found at 40 C.F.R. §§ 265.140-150 or O.A.C. §§ 3745-66-40 through 50.

38. On or about January 4, 1989, OEPA provided a written disapproval of Ekco's closure plan based on technical deficiencies that OEPA enumerated.

39. The January 4, 1989, disapproval notice described the right to seek an adjudication hearing, expressly requiring that the request for a hearing "shall specify the issues of fact and law to be contested."

40. On or about February 2, 1989, Ekco filed a Request for Adjudication of OEPA's disapproval of the closure plan. The Request for Adjudication specified the issues which Ekco wished to have adjudicated.

41. Ekco's Request for Adjudication did not request review of or refer to the financial responsibility requirements.

42. Pursuant to the PCAO, Ekco was to have documented its compliance with the financial responsibility regulations at the time of the submission of the closure plan. From at least

August 1988, Ekco should have established and maintained compliance with the financial responsibility regulations.

43. As of August 1988, Ekco had not submitted any documentation of compliance with the financial responsibility regulations to OEPA or to U.S. EPA.

44. The obligation to comply with the financial responsibility requirements was not contingent upon any other state regulation. The obligation to establish and maintain financial responsibility at the time of submission of the closure plan was not contingent upon compliance with or approval of any other requirement under any other provision of the PCAO. These financial responsibility obligations were not contingent upon the submission or approval of the closure plan, or the submission or approval of cost estimates for closure or post-closure care. Ekco's obligation to establish and maintain financial assurances continued after the disapproval of the closure plan. The obligation to maintain liability coverage is not contingent upon a comprehensive assessment of technical information or upon the existence or extent of environmental contamination at a facility.

45. At the time, in August 1988, that Ekco had submitted a proposed closure plan, Ekco was able to, and did, submit cost estimates for closure and post-closure care.

46. Ekco's claim that it could not establish financial assurances until the closure plan was approved is without basis. In fact, Ekco had prepared a closure plan and developed cost

estimates for closure and post-closure care as early as January 1988.

47. The owner or operator of a hazardous waste management unit should be fully capable of predicting the cost of closing the unit. The obligation to establish and maintain financial assurance for closure and post-closure care is not dependent upon whether a closure plan has been submitted or approved by the regulatory agency, and the obligation exists even if a closure plan is not timely submitted or if the closure plan is disapproved.

48. Ekco never advised U.S. EPA that it was unable to comply with the financial responsibility regulations. Ekco never advised U.S. EPA that it did not understand the regulations.

49. The financial responsibility requirements are important components of the RCRA program, which is designed for the protection of human health and the environment. The liability coverage provisions insure that funds are available to compensate persons who may suffer injury or property damage as a result of the hazardous waste activity. The regulations also act as inducement to owners and operators to properly maintain the hazardous waste facility.

50. U.S. EPA advised Ekco that its violation of the regulations and the PCAO were serious violations.

51. By entering into a consent agreement with the United States to resolve past violations, and then continuing those violations and violating the terms of the consent agreement,

Ekco has caused the United States to expend resources and has hindered U.S. EPA's ability to secure compliance with the RCRA program.

52. The liability coverage component of the financial responsibility regulations is considered important to EPA in order to afford the public with a sense of security regarding the potential risks, such as bodily injury or property damage, associated with the management of hazardous wastes.

53. The liability coverage requirement is intended to remain in place throughout the closure process, protecting against the risks associated with closure itself.

54. The closure process itself contains risks of exposure. Ohio EPA was concerned that during the closure process the contaminated soils might become airborne.

55. In reviewing the closure proposal, Ohio EPA was concerned about the highly contaminated sludge and subsoils in the surface impoundment and the potential for contact with the underlying water table.

56. As of the date Ekco finally complied fully with the liability coverage provision, March 11, 1993, Ekco had not stabilized the hazardous metals contained in the soils at the surface impoundment. The closure work to stabilize the metals did not commence until August of 1993.

57. The assessment of civil penalties is important to EPA in order to deter the particular party from future violations of the specific RCRA regulation and all RCRA regulations. It is

also important to deter violations by other regulated parties. It also serves to eliminate or reduce the economic advantage of noncompliance that violators gain over those who comply.

58. The failure to comply of a party who enters into an administrative consent agreement, such as Ekco, has a negative impact upon the regulatory program and causes the EPA to expend public resources to enforce the agreement.

59. Other factors considered important to EPA are the extent of the violation, the duration of the violations, the seriousness of the violations, potential for harm occasioned by the violation, the good-faith efforts to comply, and any economic benefit attributed to noncompliance.

60. Ekco did not fully comply with the financial assurances and liability coverage requirements until September 9, 1992, and March 11, 1993, respectively.

61. From at least August 15, 1988, until the date Ekco fully complied with the requirements for financial assurance for closure, Ekco was in continuous violation for 1,486 days.

62. Ekco was in continuous violation of the requirement to establish and maintain financial assurances for post-closure care from at least August 1988 until July 1992, the date it submitted a proposed closure plan for off-site removal of the hazardous waste in the surface impoundment. This violation lasted at least 1,445 days.

63. Ekco was in continuous violation of the requirement to establish liability coverage for personal injury and property

damage resulting from both sudden and nonsudden accidental occurrences from at least August 15, 1988, until the date Ekco fully complied, March 11, 1993. This was a total of 1,675 days.

64. The number of days for which Ekco is subject to a civil penalty of \$25,000.00 per day for failing to maintain financial assurances for closure, post-closure care and liability coverage for accidental occurrences is 4,606 days.

65. On or about March 17, 1988, OEPA notified Ekco that it was in violation of the RCRA regulations at its facility pursuant to the O.A.C. and the Code of Federal Regulations.

66. The March 17, 1988, notice informed Ekco that the facility must "establish financial assurance for closure (40 C.F.R. § 265.143 and O.A.C. § 3745-66-43), and for liability coverage (40 C.F.R. § 265.147 and O.A.C. § 3745-66-47)."

67. On September 22, 1989, OEPA sent Ekco a letter again notifying it that it had failed to comply with the Ohio regulations, O.A.C. Rules 3745-66-42 through 3745-66-47, with regard to financial responsibility. The September 22, 1989, letter notified Ekco that it "must have and maintain . . . financial assurance for closure and post-closure care, and liability coverage for sudden and nonsudden accidental occurrences." Ekco was also notified of its obligations under the PCAO. The Notice reminded Ekco that terms of the PCAO which it had entered into with U.S. EPA "required compliance with financial assurance requirements until final closure, pursuant to 40 C.F.R. 265.140 through 265.151."

68. In addition to advising Ekco of its ongoing violation of the State of Ohio financial responsibility regulations, and its obligation pursuant to the PCAO, the September 22, 1989, notice accurately advised Ekco of the requirement to revise its cost estimates for closure, in order to adequately establish financial assurances.

69. On September 28, 1989, six days after the September 22, 1989 letter, Ekco Housewares, through counsel, discussed with OEPA the financial responsibility requirements and the contents of the September 22, 1989, letter. OEPA advised Ekco that it could not wait until approval of the closure plan to comply with the financial responsibility requirements.

70. Ekco was able to, and did, develop cost estimates for closure and post-closure in January 1988, with estimated combined costs for closure and post-closure care of \$2.4 million. Ekco developed cost estimates for closure and post-closure in August 1988, with estimated combined costs of \$1.7 million.

71. At no did time OEPA advise Ekco that it could not submit the financial assurances for closure until the closure plan was approved.

72. There is no evidence that Ekco attempted to submit revised cost estimates or financial assurances for closure and post-closure care which were rejected because the closure plan was not approved.

73. Ekco did not submit revised cost estimates for closure until July 1992.

74. Ekco, or its agent in its behalf, was able to, and did in fact, develop cost estimates for each revision to the closure plan.

75. If a proposed closure plan is disapproved, as in Ekco's case, an owner or operator of a hazardous waste management unit can revise cost estimates for closure by referring to the comments and attachments contained in the disapproval correspondence.

76. Ekco understood the requests being made in the disapproval notice and was able to estimate the costs of meeting the requirements in that letter. In fact, in this instance, Ekco, through its agent, was able to, and did, develop cost estimates for the items listed in the notice of disapproval.

77. On or about March 12, 1990, OEPA again notified Ekco, informing Ekco in writing that it was violating O.A.C. Rules 3745-66-42 through 3745-66-47, and that it was also violating terms of the November 4, 1987, PCAO with U.S. EPA.

78. On April 23, 1990, Ekco submitted to OEPA a copy of its general liability policy for the Massillon facility.

79. The general liability policy, submitted by Ekco on April 23, 1990, contained an absolute exclusion for pollution related claims. Ekco was advised on May 3, 1990, that the general liability policy was insufficient. Additional discussion with Ekco's representative took place on May 15, 16 and 17, 1990. Ekco was aware of the pollution exclusion at the time it submitted the policy.

80. The general liability policy submitted by Ekco on April 23, 1990, did not meet the requirements of 40 C.F.R. § 265.147(A) or (B), and O.A.C. § 3745-66-47(a) or (b).

81. Between September 22, 1989, and April 1992, Ekco Housewares, or its representative, communicated by telephone with representatives of OEPA regarding financial responsibility at least 20 times.

82. During the numerous telephone conversations between OEPA and representatives from Ekco, there was discussion, among other things, of the necessity of compliance and available means and mechanisms of compliance.

83. Between September 22, 1989, and April 1992, Ekco Housewares, or its representative, exchanged written communications with representatives of OEPA regarding financial responsibility approximately 8 to 10 times.

84. On March 17, 1988, September 22, 1989, March 12, 1990, October 16, 1990, July 8, 1991, August 2, 1991, August 11, 1992, and December 24, 1992, Ekco Housewares, or its representatives, were advised that the company was not in compliance with the financial responsibility requirements under State of Ohio regulations and/or under the PCAO.

85. Not once during the numerous telephone conversations and correspondences which occurred between September 22, 1989, and April 1992, did Ekco or its representatives advise OEPA that it believed it had received a waiver of the obligation to comply with the financial

responsibility requirements or an extension of the time for compliance.

86. On February 12, 1990, Ekco, through counsel, discussed with OEPA the requirements of a Letter of Credit for purposes of compliance with the financial assurances for closure and post-closure care regulations. OEPA informed Ekco that Ekco Housewares and the Ekco facility must be named in the Letter of Credit.

87. On June 11, 1990, a request was filed on behalf of Ekco for a variance from the requirement to maintain liability coverage for nonsudden accidental occurrences, pursuant to O.A.C. § 3745-66-47.

88. In late June of 1990, Ekco requested OEPA not to act on its variance request.

89. On or about June 25, 1990, a Letter of Credit and Standby Trust Agreement was submitted on behalf of Ekco to OEPA to document financial assurance for closure of the surface impoundment.

90. Neither Ekco, nor anyone in its behalf (including AHP) submitted any documentation of compliance with the requirement to maintain liability coverage for sudden and nonsudden occurrences with the June 25, 1990, submission. Neither Ekco nor anyone in its behalf (including AHP) submitted any documentation of compliance with Ekco's requirement to maintain liability coverage for sudden and nonsudden occurrences on June 25, 1990.

91. The Letter of Credit, submitted on June 25, 1990, did not name the Massillon facility or Ekco. This submission, which failed to name Ekco, was inconsistent with the previous discussions between OEPA and counsel for Ekco, where Ekco was advised that the Letter of Credit must name Ekco.

92. Ekco claims that AHP was obligated to comply with the required financial assurances and liability coverage on behalf of Ekco and that AHP could have done so relatively inexpensively. Yet neither Ekco nor AHP attempted compliance with the financial assurance provisions until June 25, 1990, and the liability coverage provision until September 1992.

93. On October 11, 1990, OEPA advised Ekco, through counsel, of certain amendments to the regulations which allowed for a third party with a "substantial business relationship" to demonstrate liability coverage.

94. On or about October 16, 1990, OEPA notified Ekco, its representative, and AHP, that the June 25, 1990, submission of a Letter of Credit and Standby Trust Agreement was inadequate to meet the requirements of 40 C.F.R. §§ 265.13 and 145 or O.A.C. §§ 3745-66-43 and 45.

95. On or about November 20, 1990, further documentation was submitted on behalf of Ekco to correct some, but not all, of the deficiencies identified in the June 25, 1990, submission concerning financial assurance.

96. On or about July 8, 1991, OEPA informed Ekco and AHP of continuing violations of the provisions of O.A.C.

§§ 3745-66-43, 45 and 47.

97. On August 2, 1991, OEPA informed Ekco and AHP that it would not approve the request for a variance from the liability coverage requirements because Ekco had failed to demonstrate adequately that "the risks associated with the operations of the Massillon facility dictate an elimination of nonsudden financial responsibility required by rule 3745-66-47." The notice stressed to Ekco that unless and until such a variance was approved, the coverage required under that provisions must be maintained.

98. In the August 2, 1991, notice, OEPA also advised Ekco that during the pendency of the variance request it must maintain liability coverage. The letter also noted the continuing violation of the liability coverage requirements.

99. On August 11, 1992, OEPA sent a notice to Ekco and AHP which noted that the Massillon facility was in continuing violation of the requirements of, inter alia, O.A.C. §§ 3745-66-43, 45 and 47, and the provisions of Ekco's November 4, 1987, PCAO with U.S. EPA.

100. On September 9, 1992, documentation was finally submitted on behalf of Ekco to correct the deficiencies in its June 25, 1990, submission and to meet the requirements of 40 C.F.R. §§ 265.143 and 145 and O.A.C. §§ 3745-66-43 and 45 for financial assurance for closure and post-closure care. No evidence of compliance with the liability coverage provisions had been submitted at this time.

101. Prior to at least June 25, 1990, neither Ekco Housewares nor anyone in its behalf submitted any documentation to attempt to establish financial assurance for closure or post-closure care of its surface impoundment.

102. Between September 29, 1992, and October 20, 1992, Ekco first submitted documentation of liability coverage by means of a corporate guarantee, one of the methods allowed under the regulation. This submission, however, did not fully satisfy the statutory requirements because it failed to include a certified independent auditor's report as required under O.A.C. § 3745-66-47 and the guarantee had been backdated.

103. Ohio EPA could not ascertain the existence of an enforceable "substantial business relationship" between Ekco and AHP unless and until such time as it was documented and supported by a corporate guarantee. No such documentation was presented until the September 29, 1992, submission. The liability coverage documentation is then available to the public upon request. The documentation of liability coverage allows the public to be assured of a source for compensation for injuries which may result from hazardous waste activities.

104. On December 24, 1992, OEPA advised Ekco and AHP of the deficiencies in the September 29 and October 20, 1992, submissions.

105. Not until March 11, 1993, did Ekco submit documentation to OEPA which was sufficient to demonstrate that it adequately met the liability coverage requirements of 40 C.F.R.

§§ 265.147(a) and (b) or O.A.C. §§ 3745-66-47(A) and (B).

106. From at least August 15, 1988, until at least June 25, 1990, Ekco failed to comply with the terms of the PCAO that it had entered into with U.S. EPA. At no time during this time period did AHP fulfill these obligations on Ekco's behalf.

107. From at least August 12, 1988, until at least June 30, 1989, Ekco failed to comply with the requirements of 40 C.F.R. §§ 265.143, 145 and 147. At no time during this time period did AHP fulfill these obligations on Ekco's behalf.

108. From at least June 30, 1989, until at least June 25, 1990, Ekco failed to comply with the requirements of O.A.C. §§ 3745-66-43 and 45. At no time during this time period did AHP Corporation fulfill these obligations on Ekco's behalf.

109. From at least June 30, 1989, until at least September 29, 1992, Ekco failed to comply with the requirements of O.A.C. §§ 3745-66-47(A) and (B). At no time during this time period did AHP fulfill these obligations on Ekco's behalf.

110. During the period in which Ekco had failed to maintain liability coverage, there had been evidence of groundwater contamination at the facility.

111. The wastewaters discharged to the surface impoundment between November 1980 and June 1984 were contaminated with, among other things, 1,1,1 trichloroethane ("TCA") and trichloroethylene ("TCE"). A source of these contaminants was the cooling water which was discharged to the surface impoundment until June 1984.

112. The surface impoundment sludges and subsoils displayed elevated levels of volatile organic compounds. Sampling of the waters in the surface impoundment in 1984 indicated the presence of TCA and TCE. TCA was found in the surface impoundment waters at concentrations of 3,600 parts per billion.

113. Ekco's analyses concerning the surface impoundment indicate the presence of three heavy metals (lead, cadmium and chromium) in elevated concentrations in the sludge and subsurface soils.

114. Sludge and soil sampling has indicated cadmium, chromium and lead occur at elevated concentrations at the facility.

115. Analytical results of the sludge and subsurface soils beneath the surface impoundment indicated a range of concentrations for cadmium of up to 8,370 parts per million ("ppm"); for lead up to 25,000 ppm, and for chromium up to 923 ppm.

116. Elevated levels of lead, a hazardous constituent, were detected in a well, No. L-5, outside the confines of the surface impoundment and downgradient from the surface impoundment.

117. Vinyl chloride was also detected in well L-5 in 1988 and in 1990.

118. Sampling from the vicinity of the surface impoundment indicates that hazardous substances, including lead, chromium, cadmium, TCA, TCE and vinyl chloride, have been emanating from the surface impoundment.

119. Hazardous wastes or constituents have been identified in the groundwater in the vicinity of the Ekco facility, specifically in the vicinity of the surface impoundment.

120. Ekco's analyses concerning the surface impoundment also indicate that organic compounds detected in and beneath the surface impoundment have been found in the groundwater beneath the Massillon facility.

121. Groundwater flow direction in the vicinity of the Ekco plant can vary significantly.

122. Based on data provided by Ekco Housewares, the surface impoundment is the source of hazardous waste, TCE, in wells downgradient from the impoundment.

123. Beneath the Ekco facility there are two distinct aquifers.

124. The sandstone bedrock aquifer is directly beneath the Ekco facility. The sand and gravel or "Tuscarawas River" aquifer is adjacent to the Ekco facility.

125. The Tuscarawas River aquifer is a major source of drinking water supply for the City of Massillon.

126. There are four public drinking water wells within 2,500 feet of the Ekco facility. Ekco's Massillon plant is within one-half (1/2) mile of the City of Massillon, Ohio's municipal water wells Nos. 1 through 4.

127. The City of Massillon well No. 4 was closed on September 2, 1986. Prior to the shutdown of well No. 4, sampling confirmed the presence of vinyl chloride in the well. The public

drinking water well No. 4 is maintained by the Ohio Water Service and is 1,000-1,500 feet to the east of the Ekco facility. It has been abandoned due to the presence of contamination.

128. One of the contaminants discovered in the drinking water well, vinyl chloride, is a degradation product of TCA and TCE.

129. The contaminants in the groundwater beneath the surface impoundment are the same type as the contaminants identified in the abandoned drinking water well, Ohio Water Service Well No. 4.

130. The Ekco facility is a likely source for the contaminants found in the Ohio Water Service Well No. 4.

131. As of July 1991, Ekco's groundwater monitoring system was not operated and maintained to determine the rate and extent of migration and concentrations of hazardous wastes in groundwater associated with the management of the hazardous waste surface impoundment. That is the purpose of groundwater monitoring requirements.

132. Lead, chromium, cadmium, TCA, TCE and vinyl chloride are hazardous substances.

133. A hazardous substance is a substance which has the potential to have a deleterious influence on human health.

134. Most of the hazardous substances identified above, lead, chromium, cadmium, TCA, TCE and vinyl chloride, are known or suspected carcinogens.

135. The threshold level of risk associated with carcinogenic effects of hazardous substances can be produced by levels down to zero.

136. Cadmium is a toxic metal to which exposure can result from inhalation or ingestion. Cadmium is retained in the kidney and liver. The possibility of accumulation over time is a concern to human health.

137. Cadmium can cause, among other things, lung inflammation, emphysema, lung cancer and kidney damage to humans.

138. The primary concern from cadmium exposure is cancer.

139. Testing performed by Wadsworth Laboratories Testing Company, on behalf of Ekco, indicated that cadmium was leaching from the surface impoundment.

140. Concentrations of cadmium would be of concern at approximately 100 to 200 parts per million. Ekco's sampling indicated cadmium concentrations at the facility in the thousands of parts per million.

141. Lead is a toxic substance which has a propensity to accumulate in the body over time.

142. Lead exposure can occur through inhalation or ingestion, and its effects are primarily neurological, as well as having effects on bone marrow, with a risk of kidney cancer.

143. The most important toxicological effect of lead is the possible toxicity to children. Lead risks include possible brain damage and damage to development of the nerve system. Lead

may have an irreversible effect in developmental stages in children.

144. The effects of lead exposure can occur at very low levels.

145. The sampling data from the soils in or around Ekco's surface impoundment indicated the presence of extremely high levels of lead.

146. Chromium is a toxic metal which can cause lung inflammation and is associated with lung cancer. In addition to exposure by inhalation or ingestion, there is evidence that dermal exposure is a route of access for chromium into the human body.

147. The sampling data from the soils in the surface impoundment indicated high levels of chromium.

148. EPA has determined that the presence of cadmium, chromium, lead, TCA, TCE, vinyl chloride and dichlorobenzene in the soils, surface water or groundwater detected at the Ekco facility requires a response to protect human health and the environment.

149. Ekco had determined that because of the elevated levels of cadmium, chromium and lead in the surface impoundment sludges there was a potential that the metals could be carried in the groundwater.

150. Ekco's consultants determined that a potential contaminant pathway of concern was that contaminated groundwater would be consumed by downgradient drinking water well users.

151. Ekco's consultants also determined that until the surface impoundment was stabilized and capped, the hazardous waste contaminants could potentially leach into the groundwater and that rainfall could percolate through the surface impoundment sludges and mobilize the hazardous waste contaminants.

152. During the years when Ekco failed to maintain liability coverage, the surface impoundment was not capped or stabilized.

153. Surface water runoff posed another pathway for hazardous waste contaminants to be mobilized. Wells L-4 and L-5, which were outside the perimeter of the surface impoundment, contained evidence of contamination. Evidence indicates that flood conditions have existed in the vicinity of the surface impoundment, and surface water could have entered wells L-4 and L-5 and mobilized contaminated soils.

154. Ekco's consultant also determined that the risk of exposure by air dispersal of contaminated sludge could occur during construction activities in and around the surface impoundment, including the closure process. The risk associated with the hazardous wastes in the surface impoundment would continue until closure was completed.

155. TCE is a volatile organic compound, and exposure to it can occur through inhalation. The primary toxicological effect from TCE is neurological; TCE affects the central nervous system.

156. The other primary toxicological effect of TCE is in the liver. Exposure to TCE is associated with both kidney and lung cancer.

157. TCE dissolves readily in water and therefore can be transported readily wherever the water goes. TCE persists in an underground aquifer system and can move along with ground water. Once in the ground water, volatile organic compounds are persistent and do not easily correct themselves.

158. Based on a review of the data, levels of TCE in the surface impoundment and in the groundwater exceed levels of concern for human health.

159. TCA is also a volatile organic compound. It has a propensity to affect the central nervous system. Exposure to TCA poses possible genetic effects.

160. Dichloroethylene ("DCE") and vinyl chloride are known to be degradation products of TCE. If TCE exists in the groundwater, over a period of time, it degrades first to DCE and then to vinyl chloride.

161. DCE was detected in the groundwater in the vicinity of the surface impoundment at levels that exceed concern for human health.

162. Vinyl chloride is also a toxic organic compound. Exposure to it can occur by inhalation or ingestion, as well as by dermal absorption.

163. Vinyl chloride has been associated in humans with toxic effects, such as lung fibrosis, lung emphysema, and liver cancer.

164. Vinyl chloride was detected in the groundwater in the vicinity of the surface impoundment at the Ekco facility at levels which are of concern to human health.

165. Vinyl chloride was also detected in the public drinking water well, Ohio Water Service Well No. 4, at levels which are of concern to human health.

166. During the time period that Ekco was obligated and failed to maintain liability coverage, there was a potential of exposure to hazardous wastes which possess extremely adverse health risks associated with such exposure. This potential could lead to a liability claim for personal injury--the type of injury the liability coverage is designed to protect.

167. As a result of its failure to comply with the terms of its agreement with U.S. EPA under the PCAO and with the applicable regulations under RCRA promulgated at 40 C.F.R. §§ 265.140-150 and O.A.C. §§ 3745-66-40 through 50, Ekco has obtained an economic benefit as a result of its noncompliance.

168. As a result of its violation of the requirement to establish and maintain financial assurances for closure and post-closure care of its hazardous waste surface impoundment from August 15, 1988, until November 30, 1990, Ekco gained an economic benefit of at least \$75,297.00.

169. As a result of its violation of the requirement to establish and maintain liability coverage for its hazardous waste surface impoundment from August 15, 1988, until September 29, 1992, Ekco gained an economic benefit of between \$359,281.00 and \$538,922.00.

170. The only way to determine the exact cost of insurance for Ekco's hazardous waste surface impoundment would have been for Ekco to have had insurance agents conduct the analysis, but Ekco failed to seek insurance for the relevant time period.

171. At a minimum, Ekco's economic benefit resulting from its noncompliance of the PCAO and applicable regulations was \$434,000.00.

172. Ekco has incurred an economic benefit of at least \$434,000.00-\$614,000.00 due to its failure to establish and maintain financial assurances for closure, post-closure care and liability coverage for its hazardous waste surface impoundment, as required under the PCAO and as required under the applicable RCRA regulations.

173. Ekco has the ability to pay a significant civil penalty for its violations of RCRA and the PCAO.

174. There is no evidence that Ekco, or AHP on behalf of Ekco, made any effort to obtain liability coverage which would comply with the applicable regulation prior to September 1992.

175. The indemnity agreement which Ekco alleges existed between it and AHP did not unconditionally obligate American Home

Products to provide liability coverage for the hazardous waste surface impoundment at the Ekco facility.

176. Ekco did not know whether the alleged indemnity was unconditional when it chose not to comply with its obligations.

177. Ekco was aware that OEPA was requesting compliance with the regulations requiring financial assurances for closure, post-closure care and liability coverage between 1988 and 1992.

178. There is no evidence presented indicating that Ekco discussed anything regarding the financial responsibility requirements with the Ohio Assistant Attorney General ("AAG") prior to December 27, 1991. That December 27, 1991, letter does not support the claim that any waiver of compliance was given. There is no evidence that a waiver of compliance or an extension to comply was ever given. As of June 4, 1991, the Ohio AAG had not acknowledged in writing that there had been any purported extension or waiver of the financial responsibility requirements. The Ohio AAG would not have forwarded any comments to Ekco without first consulting with OEPA and receiving OEPA's permission to do so.

179. There is no convincing evidence of reliance by Ekco on any statements allegedly made by an Ohio AAG in not complying with the PCAO or the applicable regulations. The evidence submitted by Ekco, a letter dated September 25, 1992, from the State of Ohio AAG to counsel for the United States was sent to Ekco over four years after it was to have complied with the PCAO.

Prior to receiving a copy of that letter, Ekco did not have any information upon which to base its claim of reliance.

180. The history of negotiations with the Ohio AAG regarding settlement of the closure plan, as incorporated in a January 25, 1993, agreement, does not include references to the financial responsibility requirements. Ekco did not make financial responsibility requirements part of the appeal that was the subject of this settlement.

181. The OEPA did not ask Ohio AAG to address financial responsibility requirements in its negotiations with Ekco.

182. The attorney representing Ekco appeared to have a thorough understanding of the issues surrounding the adjudication of the closure plan and of the requirements of the Ohio regulations.

183. The agreement, which Ekco alleges existed, to revisit the financial responsibility issues was only procedural in nature. That alleged agreement did not occur until around December 27, 1991. This was long after Ekco had been advised on numerous occasions of its continuing violations. Ekco, or its representatives, were advised that Ekco was not in compliance with the financial responsibility requirements under State of Ohio regulations and/or under the PCAO.

184. Ekco never indicated to OEPA during the numerous telephone conversations and correspondences which occurred between September 22, 1989, and April 1992, that it believed it had received a waiver of the obligation to comply with the financial

responsibility requirements or an extension of the time for compliance. Ekco never informed the Ohio AAG during the closure plan negotiations that it had received numerous requests for compliance.

185. Ekco never advised U.S. EPA of its alleged receipt of an extension for, or waiver of, compliance with the financial responsibility requirements.

186. The Ohio AAG never informed Ekco, or its representative, that Ekco did not need to fulfill the requirements of the Ohio regulations with respect to financial assurances for closure. The Ohio AAG never informed Ekco, or its representative, that it did not need to comply with the Ohio regulation with respect to liability coverage.

187. The Ohio AAG never represented to Ekco anything other than that the Ohio regulation requires compliance at all times.

CONCLUSIONS OF LAW

1. As the owner and operator of a hazardous waste treatment, storage or disposal ("TSD") facility in existence prior to November 19, 1980, Ekco was subject to the interim status requirements. Ekco did not, however, obtain interim status. See Opinion, pp. 8-9.

2. Because hazardous waste was discharged to the surface impoundment at the Ekco facility after the effective date of the Resource, Conservation and Recovery Act, as amended

("RCRA"), 42 U.S.C. §§ 6901, et seq., Ekco was subject to the RCRA regulations for TSD facilities including financial responsibility requirements at 40 C.F.R. §§ 265.140-150 and O.A.C. §§ 3745-66-40 through 50. See Opinion, p. 10.

3. As an owner or operator of a RCRA hazardous waste TSD facility, Ekco was required, but failed, to have and maintain sudden accidental occurrence coverage under 40 C.F.R.

§§ 265.147(a) and (b) and under O.A.C. Rules 3745-66-47(A) and (B). 40 C.F.R. § 265.147(a) provides substantially as follows:

An owner or operator of a hazardous waste treatment, storage or disposal facility, or group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs. This liability coverage may be demonstrated as specified in subsections (a)(1), (a)(2) (by passing a financial test or using a specified guarantee for liability coverage), (a)(3) (obtaining a specified letter of credit), (a)(4) (obtaining a specified surety bond), (a)(5) (obtaining a specified trust fund) and (a)(6) (using a combination of the foregoing instruments).

40 C.F.R. § 265.147(b) provides:

An owner or operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste, or group of such facilities, shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of such facilities. The owner or operator shall have and maintain liability coverage for nonsudden accidental

occurrences in the amount of at least \$3 million per occurrence with an annual aggregate of at least \$6 million, exclusive of defense costs. An owner or operator meeting the requirements of this Section may combine the required per-occurrence [and aggregate] coverage levels for sudden and nonsudden accidental . . . into a single annual aggregate level [\$4 million per occurrence and \$8 million aggregate].

4. The "operations" of a facility which must be insured against include any type of hazardous waste TSP since the effective date of RCRA. Findings of Fact No. 6.

5. The RCRA regulations contemplate that the financial responsibility requirements shall be in place both before and during the closure process. See Opinion, p. 5. The obligation to maintain liability coverage, therefore, remains until the hazardous waste management unit is "closed" pursuant to applicable regulation and an approved plan. See 40 C.F.R. § 265.147(e); O.A.C. § 3745-66-47(E); see also Findings of Fact No. 4. The Hazardous and Solid Waste Amendments of 1984 to RCRA ("1984 Amendments"), which included the loss of interim status provisions, did not affect that obligation. Findings of Fact Nos. 18, 19. The 1984 Amendments added a statutory sanction to noncompliance with the RCRA requirements; that is, in order to retain interim status, certification of compliance was required. Findings of Fact Nos. 17, 18. The fact that Ekco had stopped actively discharging hazardous wastes to, but had not yet closed, the surface impoundment did not affect Ekco's obligation to have established the required coverage, nor did it eliminate the risks associated with the hazardous wastes contained in or emanating

from the surface impoundment, the very risks that liability coverage is designed to protect against. See, e.g., 40 C.F.R. § 265.147(e); see also Findings of Fact Nos. 4, 5, 11, 12, 18, 19, 52, 53, 150-51.

6. Ekco did not have interim status, therefore, it could not have retained interim status under the 1984 Amendments. See Opinion, p. 8.

7. Ekco discharged hazardous waste to its surface impoundment after the effective date of RCRA (Opinion, p. 10), therefore, it "operated" the surface impoundment and was subject to the requirement to establish and maintain liability coverage pursuant to the RCRA regulations until closure had been certified. 40 C.F.R. § 265.147; Findings of Fact No. 6.

8. By failing to have and maintain liability coverage for personal injury and property damage resulting from sudden and nonsudden occurrences for its surface impoundment, Ekco violated 40 C.F.R. §§ 265.147(a) and (b) and the corresponding Ohio regulations at O.A.C. §§ 3745-66-47(A) and (B) on a continuing basis until March 11, 1993. See Opinion, pp. 4, 7.

9. Under 40 C.F.R. § 265.145 and O.A.C. § 3745-66-45, Ekco was required to establish and maintain financial assurances for post-closure care of its hazardous waste "disposal" unit until closure had been certified and approved. See 40 C.F.R. § 265.145(h); Opinion, p. 5.

10. This Court now finds that, for the purposes of

40 C.F.R. § 265.145 and O.A.C. § 3745-66-45, Ekco owned and operated a hazardous waste "disposal" unit after the effective date of the regulation. Therefore, Ekco was obligated to establish and maintain financial assurances for post-closure care of the surface impoundment until, pursuant to the provisions of O.A.C.

§ 3745-66-45(H) or 40 C.F.R. § 265.145(h), Ekco is no longer obligated to maintain post-closure financial assurances. See 40 C.F.R. § 265.145(h) and O.A.C. § 3745-66-45(H).

11. By failing to establish and maintain financial assurances for post-closure care of the surface impoundment, during the period from at least August 1988 until September 9, 1992, Ekco violated the provisions of the Partial Consent Agreement and Order ("PCAO") and the applicable regulations found at 40 C.F.R. § 265.145 and O.A.C. § 3745-66-45. Opinion, p. 7.

12. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), provides that:

any person who violates any requirement of this subchapter shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation. Each day of violation shall, for purposes of this subsection, constitute a separate violation.

13. Pursuant to Sections 3008(c) and (g) of RCRA, 42 U.S.C. §§ 6928(c) and (g), Ekco is liable for civil penalties not to exceed \$25,000.00 per day for each day of each violation of RCRA, applicable U.S. EPA and State of Ohio EPA regulations at 40 C.F.R. §§ 265.143, 145, 147, and O.A.C. §§ 3745-66-43, 45, 47, and Ekco's obligations pursuant to the PCAO.

14. The assessment of a civil penalty is committed to the informed discretion of the Court. See United States v. ITT Continental Baking Co., 420 U.S. 223, 230 n. 6, (1975); United States v. Phelps Dodge Industries, Inc., 589 F. Supp. 1340, 1362 (S.D.N.Y. 1984); United States v. T & S Brass and Bronze Works, Inc., 681 F. Supp. 314, 322 (D.S.C. 1988), aff'd in part and vacated in part on other grounds, 865 F. 2d 1261 (4th Cir. 1988).

15. In exercising this discretion, the Court should give effect to a major purpose of a civil penalty: deterrence. See U.S. EPA v. Environmental Waste Control, Inc., 710 F. Supp. 1172, 1242 (N.D. Ind. 1989), aff'd 917 F. 2d 327 (7th Cir. 1990); United States v. T & S Brass and Bronze Works, Inc., supra; Chesapeake Bay Foundation v. Gwaltney of Smithfield, 611 F. Supp. 1542, 1556 (E.D. Va. 1985), aff'd 791 F.2d 304, 315 (4th Cir. 1986), rev'd on other grounds, 484 U.S. 49, 108 S. Ct. 376 (1987); United States v. Phelps Dodge Industries, Inc., supra, at 1358; United States v. Swingline, Inc., 371 F. Supp. 37, 47 (E.D. N.Y. 1974).

16. Even if the defendant is unlikely to repeat its violation, a substantial penalty is warranted to deter others. Student Public Interest Research Group of New Jersey, Inc. v. AT&T Bell Laboratories, 617 F. Supp. 1190, 1200 (D.N.J. 1985), aff'd in part and rev'd in part on other grounds, 842 F.2d 1436 (3rd Cir. 1988); United States v. Phelps Dodge Industries, Inc., supra, at 1367.

17. Substantial civil penalties are appropriate where a defendant has violated prior consensual agreements with environmental agencies. See United States v. M. Genzale Plating, Inc., 807 F. Supp. 937 (E.D. N.Y. 1992).

18. To serve a deterrent function, the penalty must be high enough so that noncompliance presents a substantial monetary risk for the polluter. In addition, the civil penalty must be large enough to ensure that polluters cannot simply absorb the penalty as a cost of doing business.

19. Although RCRA does not outline precise factors that should be taken into account when assessing a penalty, this Court adopts the approach used by a number of courts in looking for guidance by analogy to a section of CERCLA, 42 U.S.C. § 9609(a)(3), which empowers the United States to impose civil penalties administratively. That section specifies that the following factors should be considered: (1) the nature, circumstances, extent and gravity of the violations; (2) the violator's ability to pay, prior history of such violations, and degree of culpability; (3) economic benefit or savings (if any) resulting from the violation; (4) such other matters as justice may require. See, e.g., United States v. M. Genzale Plating, Inc., supra; U.S. EPA v. Environmental Waste Control, Inc., supra; United States v. T & S Brass and Bronze Works, Inc., supra. Such penalty cannot exceed \$25,000.00 per day for each day of each violation of RCRA.

20. Based on the number and duration of violations in this case, Ekco's total maximum statutory exposure for civil penalties in this case is \$115,150,000.00 (4,606 violation days; see Findings of Fact No. 64).

21. Ekco violated RCRA, and/or the terms of the PCAO, its 1987 agreement with the United States, for over four years. Its violation was as a result of its conscious disregard for its clear regulatory and contractual obligations. For example, Ekco ignored repeated notices and communications from the Ohio EPA, the agency charged with assuring its compliance with the RCRA financial responsibility regulations. See, e.g., Findings of Fact Nos. 81-84. Ekco knew, and unconditionally agreed to, the terms and conditions of the PCAO in November 1987, but failed even to attempt to comply with the financial responsibility requirements until June of 1990. See Findings of Fact No. 106. Ekco then continued to stall and delay further and did not come into complete compliance until 1993.

22. Despite its prior knowledge of its obligations under the PCAO, and the regulatory status for the hazardous waste in its surface impoundment, Ekco failed to fully comply with the RCRA financial responsibility requirements, as required by the PCAO, from at least August 15, 1988, until March 11, 1993. See Opinion, p. 7.

23. The very purpose of the financial responsibility requirements is to assure that the public can rely on the clean up

of the hazardous waste in an expeditious manner and be compensated for any accidental injuries. Findings of Fact No. 166.

24. Furthermore, the testimony indicates that Ekco's failure to maintain adequate RCRA groundwater monitoring during the same period that it failed to maintain liability coverage left the Ohio EPA, U.S. EPA and the general public without sufficient knowledge regarding the risk associated with the hazardous waste surface impoundment--a risk which includes the potential contamination of surrounding drinking well supplies. Findings of Fact Nos. 127-131.

25. An evaluation of the factors considered by other courts in assessing civil penalties in environmental cases leads this Court to conclude that a substantial penalty is warranted in this case in view of the seriousness, willful nature, and the length and scope of the violations at Ekco's Massillon facility, the economic benefit realized by Ekco from its noncompliance, and the need to deter future violations by Ekco and other regulated entities.

26. Ekco has failed to exercise good-faith efforts to comply with the terms and conditions of the PCAO and the requirements under the applicable RCRA regulations. Instead, the record demonstrates that Ekco's noncompliance has been tied to a calculated strategy of avoiding compliance with these requirements until the United States filed this lawsuit. While Ekco, like any other litigant, is entitled to mount a good-faith challenge to the applicability of rules and regulations, Ekco is not entitled to

use delay, obfuscation and, ultimately, the courts to attempt cast aside regulatory obligations that not only are clear, but are obligations that Ekco had agreed to and has known for over four years were applicable to its Massillon facility.

27. In construing Ekco's assertion that it acted in good faith when it failed to comply with financial responsibility requirements, this Court will look at the repeated effort of Ohio EPA to obtain Ekco's compliance and Ekco's repeated effort of Ohio EPA to obtain Ekco's compliance and Ekco's repeated failure to do so. Findings of Fact Nos. 65-109. This Court may also consider Ekco's claim that AHP could have complied in Ekco's behalf with relative ease and the fact that neither Ekco nor AHP took any steps toward compliance.

28. In this case, Ekco is subject to penalty for its violations of RCRA and the PCAO for at least 4,606 days: 1,486 days for its violation of the requirement to establish and maintain financial assurances for closure, 1,445 days for its violation of the obligation to establish and maintain financial assurances for post-closure care, and 1,675 days for its violation of the obligation to establish and maintain liability coverage for personal injury and property damage arising from the operation of the surface impoundment. Findings of Fact Nos. 61-64. Accordingly, Ekco's maximum statutory civil penalty exposure in this case is \$115,150,000.00.

29. The scope of the defendant's violation in this case is significant. It is appropriate for this Court to look to the

fact that for almost two years (August 1988 until June 1990) there was a complete absence of any effort or attempt at compliance by Ekco. Findings of Fact Nos. 90, 101. Even then, efforts to comply were inadequate and directed to only a portion of the requirements. Findings of Fact Nos. 89-91.

30. Ekco's violation of RCRA and the terms of the PCAO have resulted in, and/or at all relevant times had the potential for resulting in, harm to the environment at and around the Massillon facility. There is evidence of the releases of hazardous wastes or hazardous constituents from the surface impoundment at Ekco's Massillon facility. Findings of Fact Nos. 118, 139, 161, 164.

31. By failing to establish the required financial responsibilities prior to closing its hazardous waste management unit, Ekco created a potential risk to the public that the surface impoundment might not be finally closed or that third parties might not be compensated for injuries or damage without resorting to prolonged and unnecessary litigation. Ekco's argument that since there were no claims for injury or damage it should not be penalized is not well taken. This Court may consider the potential for harm as well as the actual harm in assessing a penalty. Ekco should not be credited with what amounts to sheer good luck that no claims have been made in the face of documented contamination.

32. Although the United States has not alleged, in this action, that Ekco has been dilatory in closing the surface

impoundment, the fact remains that the surface impoundment is not yet closed. The evidence in this case indicates that, prior to September of 1993, Ekco had not yet commenced the closure of the surface impoundment and, therefore, the risks associated with hazardous waste in and around the surface impoundment at Ekco's facility--risks that the liability coverage provisions are designed to cover--had not been eliminated or minimized. Findings of Fact Nos. 110-166.

33. In assessing a civil penalty, this Court does not need to find that an actual injury to the public has occurred; rather, the Court may assess the potential injury to the public.

34. The record is clear that the hazardous waste identified at the Ekco facility poses a significant threat to human health, including the possibility of cancer, respiratory and kidney problems. Findings of Fact Nos. 132-148, 155-163. The record is also clear, as evidenced by the testimony of Ekco's own consultant, that Ekco was aware of the potential for exposure from these wastes during the time period that it failed to maintain the liability coverage required under the PCAO and pursuant to the applicable regulation. Findings of Fact Nos. 149-154.

35. Throughout this same period there was evidence of groundwater contamination in the vicinity of the Ekco facility and in the public drinking water supply. Findings of Fact Nos. 110-130.

36. A substantial civil penalty is appropriate in this case to deprive Ekco of the economic benefit it gained as a result

of its noncompliance with the law. In this case, Ekco realized an economic benefit of at least \$434,000.00 through its failure to maintain financial responsibility in accordance with the applicable RCRA regulations. See Findings of Fact No. 171. At an absolute minimum, the assessment of a civil penalty must remove the economic incentives of noncompliance with RCRA and to deter others who might be tempted to profit through violation of federal and state environmental laws. Therefore, the total economic benefit of \$434,000.00 accrued by Ekco in this case should serve as a floor below which the civil penalty will not be mitigated. However, it is not sufficient merely to deprive Ekco of benefits it reaped through unlawful conduct. An appropriate civil penalty must also create substantial disincentives to deter Ekco, and others, from the kind of protracted, willful violation of important regulatory requirements that occurred in this case.

37. The financial responsibility requirements are important components of the RCRA program. Findings of Fact No. 49. Ekco has caused the United States to expend time and resources by entering into the PCAO with EPA and then ignoring its provisions, thus requiring EPA to seek judicial relief. Findings of Fact. Nos. 51, 58. A significant penalty is appropriate to deter Ekco, and others, from thinking that obligations assumed in settlement agreements or imposed by the regulations are trivial matters.

38. Ekco has failed to present sufficient evidence to justify mitigation of a penalty based on its claim of waiver or

estoppel. Ekco has failed to provide convincing evidence of reliance upon statements allegedly made by officials at the Ohio EPA and/or the Ohio Attorney General's office. One of the key elements in establishing a defense of waiver or estoppel is that the party claiming such a defense relied on the representations made by the other party. See Findings of Fact Nos. 179, 184. In fact, the record is clear that Ohio EPA repeatedly informed Ekco of its obligation to comply with the financial responsibility requirements. See Findings of Fact Nos. 82-84. The testimony of the Assistant Attorney General for the State of Ohio is also clear that he did not at any time advise Ekco that it need not comply with the law. Findings of Fact No. 186. Moreover, the only record of any discussions between the Ohio AAG and Ekco regarding financial responsibility indicates that the earliest date any such discussions were had was late in 1991, over three years past the time that Ekco was obligated to comply. Findings of Fact No. 183.

39. Based on the foregoing criteria and the specific circumstances of this case, the Court finds that a penalty of \$1,000.00 for each day of violation is appropriate. The Court has previously found that Ekco was in violation for at least 4,606 days (Findings of Fact Nos. 61-64). Therefore, the defendant Ekco

Housewares, Inc., is hereby ordered to pay \$4,606,000.00 in civil penalties.

40. Any Finding of Fact that should be deemed a Conclusion of Law is incorporated herein by reference.

Paul R. Matia
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

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NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA

Plaintiff

-vs-

EKCO HOUSEWARES, INC.

Defendant

JUDGE PAUL R. MATIA

CASE NO. 5:92CV1245

JUDGMENT ENTRY

This action came on for trial before the Court upon the facts without a jury from October 19, 1993, to October 22, 1993, and the issues having been duly tried and Findings of Fact and Conclusions of Law having been filed,

It is Ordered and Adjudged that plaintiff, the United States of America, recover of defendant, Ekco Housewares, Inc., the sum of Four Million Six Hundred Six Thousand Dollars (\$4,606,000.00), and its costs of action.

Paul R. Matia
UNITED STATES DISTRICT JUDGE

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FEB 01 1994

U.S. EPA, Region 5
Office of Regional Counsel



State of Ohio Environmental Protection Agency

Northeast District Office

2110 E. Aurora Road
Columbus, Ohio 44087-1969
614-25-9171
(614) 487-0769

TRACKING - DHWM, CM&ES

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RCRIS ENTRY CODES: (EVALUATION) _____ (ENFORCEMENT) _____
CEI ☐ CI ☐ OTHER _____ INITIAL NOV ☐ FOLLOW-UP NOV ☐
FULL RTC ☒ PARTIAL RTC ☐ LDR ☐ SENT TO USEPA: YES ☐ NO ☐

George V. Voinovich
Governor

January 20, 1994

RE: EKCO HOUSEWARES, INC.
STARK COUNTY
OH 045 205 424

Mr. Paul Tag
Ekco Housewares
359 State Avenue, NW
P.O. Box 560
Massillon, Ohio 44658

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JUL 14 1994

Dear Mr. Tag:

On January 18, 1994, Ohio EPA received Ekco Housewares response to the Ohio EPA's December 28, 1993 Outstanding Violations letter. Ekco Housewares had previously submitted documentation addressing violations numbered 1, 2 and 4 from the December 6, 1993 Notice of Violation letter.

Based on the documentation provided, it appears that Ekco has adequately addressed violation numbered 3 from the December 6, 1993 Notice of Violation letter as requested in the December 28, 1993 letter.

Failure to cite specific violations and deficiencies in this communication does not relieve Ekco from complying with all applicable rules and regulations.

Please be advised that any instances of non-compliance can continue as subjects of pending or future enforcement actions.

If you should have any problems or questions, please contact either Harry Courtright or me at (216) 963-1200.

Sincerely,

Karen L. Nesbit
Environmental Scientist
Division of Hazardous Waste Management

KLN.wk

cc: Harry Courtright, DHWM, NEDO
Laurie Stevenson, DHWM, CO

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DIVISION
HAZARDOUS WASTE



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State of Ohio Environmental Protection Agency

Northeast District Office

2110 Aurora Road
Twinsburg, Ohio 44087-1969
(216) 425-9171
FAX (216) 487-0769

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CEI ☐ CI ☐ OTHER ☐ INITIAL NOV ☐ FOLLOW-UP NOV ☒

FULL RTC ☐ PARTIAL RTC ☒ LDR ☐ SENT TO USEPA: YES ☐ NO ☐

Governor
Donald R. Schregardus
Director

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FEB 11 1994

December 28, 1993

RE: EKCO HOUSEWARES, INC.
STARK COUNTY
OUTSTANDING VIOLATIONS

Mr. Paul Tag
Ekco Housewares
359 State Avenue, NW
P.O. Box 560
Massillon, OH 44658

Dear Mr. Tag:

On December 22, 1993, Ohio EPA received Ekco Housewares' response to the Ohio EPA's December 6, 1993 Notice of Violation (NOV) letter.

Based on the documentation provided, it appears that Ekco has adequately addressed violations numbered 1, 2 and 4. It also appears that the concerns cited in the NOV have been addressed.

Additional information is required to document compliance with violation numbered 3 from the NOV. Ekco shall document the handling procedures for the placement and removal of the plastic. Specifically, Ekco shall submit:

- 1) a description of who will be responsible for the placement and removal of the plastic;
- 2) a description of any changes in job descriptions and training requirements;
- 3) a description of the criteria to be used to determine when the plastic will be changed; and,
- 4) a description of how the plastic will be disposed (i.e., waste characterization).

Please submit the required documentation by January 14, 1993.

Failure to cite specific violations and deficiencies in this communication does not release the facility from the responsibility of complying with all applicable regulations.

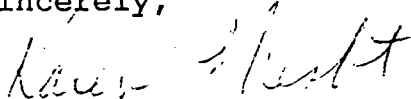
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OHIO EPA
DEC 30 93
DIVISION OF
HAZARDOUS WASTE

Page - 2 -
Mr. Paul Tag
December 28, 1993

Please be advised that any instances of non-compliance can continue as subjects of pending or future enforcement actions.

If you have any problems or questions, please do not hesitate to contact either Harry Courtright or me at (216) 963-1200.

Sincerely,



Karen L. Nesbit
Environmental Scientist
Division of Hazardous Waste Management

KLN.wk

cc: Harry Courtright, DHWM, NEDO
Laurie Stevenson, DHWM, CO



**Attorney General
Lee Fisher**

A91

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WMA WRA
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December 20, 1993

Mr. William E. Muno, Director
Waste Management Division
United States Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Dear Mr. Muno,

A copy of your letter to Linda E. Welch, Chief, Division of Solid and Hazardous Waste Management in which you praised the staff of the Attorney General's Environmental Protection Section has been brought to my attention. I am happy that you are pleased with our work and appreciate your taking the time to express your satisfaction.

Thank you again for your letter. We look forward to working with you in the future.

Very truly yours,



LEE FISHER
Attorney General

LF:kr

cc: Jack Van Kley, Chief
Environmental Enforcement Section

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JAN 24 1994

U.S. EPA, REGION V
WASTE MANAGEMENT DIVISION
OFFICE OF THE DIRECTOR



State of Ohio Environmental Protection Agency

Northeast District Office

10 E. Aurora Road
Cincinnati, Ohio 44087-1969
(616) 425-9171
FAX (216) 487-0769

TRACKING - DHMM, CM&ES
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RCRIS ENTRY COMES: (EVALUATION) 019 (ENFORCEMENT) 619
CEI ☒ CI ☐ OTHER ☐ INITIAL NOV ☐ FOLLOW-UP NOV ☐
FULL RTC ☐ PARTIAL RTC ☐ LDR ☐ SENT TO USEPA: YES ☐ NO ☐

Donald R. Schregardus
Director

December 6, 1993

CERTIFIED MAIL

Mr. Paul Tag
Ekco Housewares, Inc.
359 State Avenue, NW
P.O. Box 560
Massillon, OH 44658

RE: EKCO HOUSEWARES, INC.
STARK COUNTY
OHD 045 205 424
NOTICE OF VIOLATION

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SEP 21 1994

Dear Mr. Tag:

On November 18, 1993, Nancy Zikmanis and I, representing the Ohio EPA, conducted a hazardous waste compliance evaluation inspection of Ekco Housewares in Massillon, Ohio. Mr. Jeff Berman and Mr. Paul Pentz represented Ekco Housewares, Inc. (Ekco) during our inspection. Also, we met with Tim Farrell of Weston concerning the status of hazardous waste surface impoundment closure while on-site. The closure of the hazardous waste surface impoundment appears to be proceeding on schedule.

Ekco is a manufacturer of silicone-coated bakeware. Ekco generates eight (8) hazardous waste streams presently, but is attempting to eliminate five (5) of their hazardous waste streams. At the time of the inspection, the hazardous waste streams were the same as noted in the previous inspection of January 6, 1993.

The following violations and concerns were noted during our inspection:

Violations:

1) Satellite Container Labeling - OAC 3745-52-34(C):

A satellite container must be marked with either the words "hazardous waste" or with other words identifying the contents of the container. In the area outside the south paint room, a 55-gallon drum was identified by the facility as a hazardous waste satellite accumulation container. This container was not labeled with either the words "hazardous waste" or words identifying the contents. Ekco shall properly label the container and submit a photograph of the properly labeled container to this office.

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DIVISION of
HAZARDOUS WASTE MGT.

2) Satellite Accumulation - OAC 3745-52-34(A):

Upon filling a satellite container, the generator must move the container to the accumulation area within three (3) days. In the area near the north paint room, two (2) satellite drums of hazardous floor waste were identified. The drums were labeled with the date "November 6, 1993", which is over the three day satellite accumulation period. Ekco shall submit a photograph demonstrating that the violation has been abated.

3) Mishandling of Hazardous Waste - OAC 3745-65-31 and 3745-66-73(B):

A facility must properly handle their containers in a manner which prevents or minimizes the possibility of a non-planned release of hazardous waste. The tote accumulation area near the south paint room showed signs of past mismanagement of hazardous waste on the wall and floor. Ekco shall decontaminate the staining on the wall and floor, and develop hazardous waste handling procedures (i.e., putting down plastic covers, etc.) to eliminate this problem. Ekco shall submit to this office photographs demonstrating that the tote area was decontaminate and a description of how Ekco will change their handling procedure.

4) Placards - OAC 3745-52-33:

Before transporting hazardous wastes off-site or offering hazardous wastes for transportation off-site, a generator shall placard or offer the appropriate DOT placards to the initial transporter. Ekco could not demonstrate compliance with the regulation while we were on-site. Ekco shall document to this office that they have the appropriate placards to offer the initial transporter.

Concerns:

- 1) The "short term storage" area will have inadequate aisle space if additional drums are placed in the area. Please supply documentation showing that the area has the appropriate capacity to hold additional drums allowing for adequate aisle space.
- 2) The facility indicated that two accumulation areas may be eliminated in the future (i.e., the inside main accumulation area and the "short term storage" area). If these areas are discontinued as accumulation areas, a generator closure must be performed. A copy of the May 1991 Closure Guidance document has been enclosed to assist you.

Page - 3 -
Mr. Paul Tag
December 6, 1993

- 3) During the inspection, it was noted that a one-gallon paint can (Defi-Rust) was spilled near the outside hazardous waste accumulation area by the north door. Please supply this office with documentation of clean-up of the spill.

Please submit all above required documentation to this office on or before December 24, 1993.

Failure to cite specific violations and deficiencies in this communication does not release the facility from the responsibility of complying with all applicable regulations. Please be advised that instances of non-compliance can continue as subjects of pending or future enforcement action.

The Ohio EPA strongly encourages pollution prevention as the preferred approach for waste management. The first priority of pollution prevention is to eliminate the generation of wastes and pollutants at the source (source reduction). For those wastes or pollutants that are generated, the second priority is to recycle or reuse them in an environmentally sound manner. You can benefit economically, help preserve the environment and improve your public image by implementing pollution prevention programs. For more information about pollution prevention including fact sheets or U.S. EPA's "Facility Pollution Prevention Guide" (EPA/600/R-92/088), please contact the Ohio EPA Pollution Prevention Section at (614) 644-3469.

If you have any problems or questions, please do not hesitate to contact either Harry Courtright or me at (216) 963-1200.

Sincerely,



Karen L. Nesbit
Environmental Scientist
Division of Hazardous Waste Management

KLN.wk

cc: Harry Courtright, DHWM, NEDO
Laurie Stevenson, DHWM, CO

NOV 17 1993

Linda Welch, Chief
Division of Hazardous Waste Management
Ohio Environmental Protection Agency
1800 WaterMark Drive
P.O. Box 1049
Columbus, Ohio 43266-1049

HR-8J

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MAR 07 1994

Dear Ms. Welch:

During the week of October 25, 1993, a trial was held in the action United States v. Ekco Housewares, Inc. in the Northern District of Ohio. Ekco Housewares, Inc., had failed to provide Financial Assurance for it's Massillon Ohio facility for a number of years in violation of a United States Environmental Protection Agency (U.S. EPA) Consent Agreement and Final Order and the State and Federal regulations.

Several members of your staff participated in the trial by providing testimony to the years of violation and the conditions of the facility. These people included Michael Eggert, Karen Nesbitt, Kelly Smith, and Carolyn Reirerson. Michael Eggert gave testimony concerning the hydrogeologic conditions at the site that influenced the flow of contamination, Karen Nesbitt testified on the closure aspects of the surface impoundment that was undergoing closure during the trial, and Kelly Smith and Carolyn Reirerson testified about the financial assurance violations and the numerous communications with Ekco Housewares and U.S. EPA concerning these violations. All four of these people did an excellent job. Their knowledge, enthusiasm and hard work were greatly appreciated. The Department of Justice and U.S. EPA Attorneys had high praise for all four of your staff. U.S. EPA feels confident that with the cooperation and participation between our agencies we will continue to achieve environmentally beneficial results and deter noncompliance.

Please extend my personal thanks to Michael, Karen, Kelly and Carolyn for their time and efforts.

Sincerely yours,
Original Signed by
Norman R. Niedergang
Associate Division Director for RCRA
Waste Management Division

cc: Joel Morbito

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CONCURRENCE REQUESTED FROM REB			
OTHER STAFF	REB STAFF	REB SECTION CHIEF	REB BRANCH CHIEF

Linda Welch, Chief
Division of Hazardous Waste Management
Ohio Environmental Protection Agency
1800 WaterMark Drive
P.O. Box 1049
Columbus, Ohio 43266-1049

HR-8J

Dear Ms. Welch:

During the week of October 25, 1993, a trial was held in the action United States v. Ekco Housewares, Inc. in the Northern District of Ohio. Ekco Housewares, Inc., had failed to provide Financial Assurance for it's Massillon Ohio facility for a number of years in violation of a United States Environmental Protection Agency (U.S. EPA) Consent Agreement and Final Order and the State and Federal regulations.

Several members of your staff participated in the trial by providing testimony to the years of violation and the conditions of the facility. These people included Michael Eggert, Karen Nesbitt, Kelly Smith, and Carolyn Reirerson. Michael Eggert gave testimony concerning the hydrogeologic conditions at the site that influenced the flow of contamination, Karen Nesbitt testified on the closure aspects of the surface impoundment that was undergoing closure during the trial, and Kelly Smith and Carolyn Reirerson testified about the financial assurance violations and the numerous communications with Ekco Housewares and U.S. EPA concerning these violations. All four of these people did an excellent job. Their knowledge, enthusiasm and hard work were greatly appreciated. The Department of Justice and U.S. EPA Attorneys had high praise for all four of your staff. U.S. EPA feels confident that with the cooperation and participation between our agencies we will continue to achieve environmentally beneficial results and deter noncompliance.

Please extend my personal thanks to Michael, Karen, Kelly and Carolyn for their time and efforts.

Sincerely yours,
Original Signed by
Norman R. Niedergang

Norman Niedergang, Chief
Associate Division Director

cc: Joel Morbito

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CONCURRENCE REQUESTED FROM REB			
OTHER STAFF	REB STAFF	REB SECTION CHIEF	REB BRANCH CHIEF
AB 9 Nov 93		11/10/93	11/15/93

11/17

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To: Jack Grady	From: ART HARRIS
Dept./Agency: EPA - Pin Air	Phone #: 216 522-3711
Fax #: 216 522-4982	

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FILED

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 U.S. DISTRICT COURT
 DISTRICT OF OHIO
 EASTERN DIVISION
 CLEVELAND

UNITED STATES OF AMERICA

Plaintiff

-vs-

EKCO HOUSEWARES, INC.

Defendant

JUDGE PAUL R. MATIA

CASE NO. 5:92CV1245

MEMORANDUM OF OPINION
AND ORDER

The above-captioned matter is before the Court upon defendant Ekco's Motion for Partial Summary Judgment and plaintiff United States of America's Motion for Partial Summary Judgment as to Liability. The United States Environmental Protective Agency ("USEPA") brings the instant action for Ekco's alleged failure to establish financial assurance and liability coverage required under both the 1987 Partial Consent Agreement and Order ("PCAO"), entered into by the parties for Ekco's Massillon bakeware manufacturing facility, and the Resource Conservation and Recovery Act ("RCRA"). For the following reasons, plaintiff United States' Motion for Partial Summary Judgment as to Liability is granted in part and defendant Ekco's Motion for Partial Summary Judgment is denied in its entirety.

The United States seeks judgment relying both upon Ekco's alleged contractual assumption of financial responsibility requirements in the 1987 PCAO and financial responsibility requirements imposed directly upon owner/operators under RCRA. The 1987 PCAO entered into between the parties required Ekco to

"comply with the financial responsibility requirements for closure until closure has been certified pursuant to 40 CFR 265.140 through 40 CFR 265.151." Ekco also allegedly failed to comply with RCRA regulations requiring financial responsibility for closure of the plant's surface impoundment under 40 C.F.R. § 265.143, financial responsibility for post-closure care (40 C.F.R. § 265.145), and liability coverage for sudden and nonsudden accidental occurrences arising from operation of the facility (40 C.F.R. § 265.147).

The facts pertinent to the instant motions for summary judgment are as follows. Ekco is the owner/operator of a bakeware manufacturing facility at 359 State Avenue Extension, Massillon, Ohio. As part of its manufacturing process, Ekco generated various waste products, some of which were discharged into a surface impoundment. Between 1980 and 1983, Ekco pumped groundwater from on-site, utilized the water as contact coolant, degreaser filter spray, and spray booth wastewater, and discharged the wastewater from its operation into the surface impoundment. Sampling of surface impoundment sludge indicated cadmium concentrations above 1.00 mg/l, chromium, lead, and the presence of trichloroethane ("TCA") and trichloroethylene ("TCE").

In compliance with Section 3010 of RCRA, Ekco notified the USEPA in 1980 that the Massillon facility was generating hazardous wastes. However, Ekco did not submit Part A of its required application for permit to store, treat, or dispose of hazardous wastes under 42 U.S.C. § 6925 and 40 C.F.R.

§ 270.10. As a result of its failure to submit the Part A Application for Permit by November 19, 1980, Ekco did not receive interim status under 42 U.S.C. § 6925.

USEPA filed an Administrative Complaint, Findings of Violations and Compliance Order against Ekco on November 5, 1986. The Findings of Violations included storage of spent halogenated solvents (TCA and TCE) that were cadmium toxic and failure to comply with financial responsibility requirements under 40 C.F.R. §§ 265.140-151 and the equivalent Ohio regulations, O.A.C. §§ 3745-66-40 through 50.

USEPA and Ekco entered into the PCAO partially resolving the above Administrative Complaint. The PCAO required Ekco to submit a closure plan within 90 days of the effective date of the PCAO. Ekco received a 90-day extension for submission of the PCAO, and eventually submitted a closure plan to USEPA on August 15, 1988.

The PCAO, paragraph B(5), also required Ekco to:

comply with the financial responsibility requirements for closure until closure has been certified, pursuant to 40 CFR 265.110 through 40 CFR 265.151. At the time of submission of the closure plan for the surface impoundment pursuant to Paragraph B(1).

No documentation of Ekco's compliance with the above-quoted financial responsibility requirements was submitted with the closure plan on August 15, 1988.

The Ohio Environmental Protection Agency ("OEPA"), which was charged with responsibility for overseeing the Ohio RCRA program, disapproved the Ekco closure plan. An adjudication hearing challenging the denial of its closure plan was requested by Ekco.

American Home Products ("AHP"), former owner of the Ekco Massillon facility, submitted a Letter of Credit and Standby Trust Agreement on June 28, 1990, to document financial responsibility for closure and post-closure under 40 C.F.R. §§ 265.143 and 145. The Letter of Credit was inadequate in part for failing to name Ekco as the beneficiary of the Letter of Credit and Trust. By September 1992, AHP on behalf of Ekco corrected the deficiencies in the 1988 Letter of Credit and Trust..

In an attempt to satisfy the liability coverage requirement under 40 C.F.R. § 265.147, Ekco subsequently submitted its general liability policy for the Massillon facility, which contained an exclusion for pollution-related claims. In the Fall of 1992, Ekco submitted documentation of liability coverage via a corporate guarantee. After OEPA delineated several deficiencies, Ekco submitted documentation to OEPA sufficient to demonstrate liability coverage under 40³ C.F.R. § 265.147 in March, 1993.

The United States seeks judgment as a matter of law as to the following: (1) violation of the 1987 PCAO; (2) violation of RCRA for failure to establish financial assurance for closure and post-closure care under 42 C.F.R. §§ 265.143 and 145, and violation of RCRA for failure to establish and maintain

liability coverage for sudden and non-sudden accidental occurrences in accordance with 40 C.F.R. § 265.147. Ekco seeks summary judgment only as to § 265.147 liability coverage voluntarily assumed in the PCAO or required under RCRA.

The PCAO between the parties unambiguously sets the time for Ekco's performance. The 1987 PCAO mandates that Ekco "comply with financial responsibility requirements . . . at the time of submission of the closure plan . . ." The RCRA regulations contemplate that closure and post-closure financial responsibility requirements shall be in place before and during the closure process. See 40 C.F.R. §§ 265.143(h), 145(h), 147(e). The financial responsibility requirements are designed to ensure that funds are available in part to close a facility. United States v. T & S Brass and Bronze Works, 681 F. Supp. 314 (D. S.C. 1988), aff'd, 865 F.2d 1261 (4th Cir. 1988).

The scope of financial responsibility requirements contractually assumed by Ekco in the PCAO is a more difficult question. The Court must interpret the language as a whole giving meaning to all language of the consent agreement. The Court must look to the clear, unambiguous language of the consent agreement. A consent agreement is a contract between the parties. Where language in a consent agreement is clear such language shall be given its plain meaning. Ray Ind. v. Liberty Mutual Ins., 974 F.2d 754 (6th Cir. 1992).

Ekco's pertinent obligations under the PCAO are to "comply with the financial requirements for closure until closure

has been certified pursuant to 40 C.F.R. § 265.140 through 265.51." The USEPA argues the above language contractually obligates Ekco to provide financial assurances for closure under 40 C.F.R. § 265.143, financial assurances for post-closure under 40 C.F.R. § 265.145, and liability coverage required under 40 C.F.R. § 265.147.

In interpreting the limiting language "financial requirements for closure, until closure has been certified," the USEPA relies upon the financial assurance (40 C.F.R. §§ 265.143 and 145) and liability coverage (40 C.F.R. § 265.147) regulations themselves. Each require maintenance of appropriate assurance or liability coverage until closure is certified and the administrator concludes that financial responsibility is no longer required.

After reviewing various definitions for "financial responsibility" and the regulations' use of closure as a temporal reference, the Court concludes that the PCAO language includes both closure and post-closure financial assurance (§ 265.143 and 145) and liability coverage (§ 265.147). Congress initially utilized the term "financial responsibility" when describing all standards set forth in 40 C.F.R. §§ 265.140-150. 42 U.S.C. § 6924(a). Federal Register notices discussing the relevant § 265 regulations utilize "financial responsibility" when referring to both financial assurance (§§ 265.143 and 145) and liability coverage (§ 265.47), but use either "financial assurance" or

"liability coverage" when referring to one but not the other. 47 Fed. Reg. 16,544-45 (1982); 50 Fed. Reg. 33,902 (1985).

After examining the above-quoted Consent language as to time of performance and scope, the Court concludes that Ekco was unambiguously contractually required under the PCAO to provide financial assurance for closure under 40 C.F.R. § 265.143, financial assurance for post-closure under 40 C.F.R. § 265.143, and liability coverage under 40 C.F.R. § 265.147, upon the submission of the closure plan on August 15, 1988. Ekco did not fully comply with financial assurances and liability coverage requirements until September 9, 1992, and March, 1993, respectively.

The Court finds Ekco's arguments without merit including its claim that it was not an owner/operator of the Massillon facility. After numerous statements that discharges into the surface impoundment were for disposal of the waste, Ekco cannot now claim that it is not an owner/operator of a hazardous waste facility. See Ekco Reply Memo at 3 ("It is undisputed that the surface impoundment never was used for the temporary containment of wastes. Rather, all wastes placed in the surface impoundment were intended for permanent disposal there.")

USEPA also seeks judgment as a matter of law apart from the PCAO obligations as to its RCRA claims for failure to establish financial assurance under 40 C.F.R. §§ 265.143 and 145 and liability coverage under 40 C.F.R. §§ 265.147. Ekco also

seeks judgment as a matter of law as to liability coverage required under RCRA.

To recover under § 3008(a) of RCRA, the United States must establish the following:

- (1) Ekco is a "person" as defined in § 1004(15) of RCRA;
- (2) Ekco is an owner or operator of a hazardous waste treatment, storage or disposal facility subject to interim status standards; and
- (3) Ekco failed to comply with RCRA requirements applicable to the facility (e.g. §§ 265.143, 145, and 147).

There is no dispute that Ekco is a person under RCRA. The Court will address the remaining two prerequisites to liability under RCRA.

Defendant Ekco is an owner/operator of a hazardous waste facility subject to interim status. All facilities in existence as of November 19, 1980, which treated storage or disposal of hazardous waste, were required to attain interim status or obtain a permit. Defendant Ekco's Massillon facility was in existence on November 19, 1980, and complied with the preliminary notification requirements of § 3010(a) of RCRA. Ekco failed to submit its Part A Permit Application resulting in its failure to achieve interim status. However, facilities which failed to achieve interim status were liable to comply with the standards imposed upon interim status facilities. 40 C.F.R. §265. Without interim status or permit, treatment, storage or disposal of hazardous waste was prohibited under 42 U.S.C. § 6925(A).

Although defendant Ekco argues that it did not treat, store, or dispose of hazardous waste after November 19, 1980, the Court concludes that it is an owner/operator of a hazardous waste facility. Ekco relies upon the following two related arguments: wastewaters discharged to the surface impoundment after November 19, 1980, were not hazardous waste; and any hazardous wastes discharged to the surface impoundment prior to 1980 were not stored or treated after the effective date of the regulations. Following Ekco's analysis further, RCRA regulations were not applicable to the surface impoundment including the disputed financial responsibility requirements.

The Court finds both arguments lacking in merit. Specifically, Ekco initially claims that the wastewater "mixture" discharged to the surface impoundment after 1980 was not a hazardous waste pursuant to the D.C. Circuit's recent decision in Shell Oil Co. v. U.S.E.P.A., 950 F.2d 741 (D.C. Cir. 1991). Relying upon the D.C. Circuit's analysis vacating the U.S.E.P.A.'s use of the "mixture rule," Ekco specifically claims that the U.S.E.P.A.'s only basis for classifying the wastewater as hazardous waste is unsound. U.S.E.P.A. responds claiming that hazardous waste halogenated solvents such as TCA and TCE were introduced into the surface impoundment, managed and disposed of after 1980. Ekco additionally pumped groundwater from the aquifer laden with cadmium, lead and chromium allegedly leached from the surface impoundment, used the pumped water with high levels of heavy metals in

its non-contact cooling process, and discharged same back into the surface impound.

The Court concludes that hazardous waste was discharged to the surface impound after 1980, thereby constituting storage or disposal after the RCRA deadline. Groundwater containing chromium, cadmium, lead, TCE and TCA was used by Ekco for non-contact cooling and discharged back to the surface impound without treatment. Said discharge contained hazardous waste listed under general RCRA guidelines. A listed hazardous waste (e.g., cadmium, TCA, TCE) remains a hazardous waste until it is delisted even when listed wastes are contained in non-listed materials such as groundwater or soil. 53 Fed. Reg. 17,586 (May 17, 1988); 52 Fed. Reg. 37,045-46. Contrary to Ekco's assertion, the groundwater does not fall within the Shell Oil mixture rule. The instant hazardous wastes are hazardous waste pursuant to the "contained in" rule explained above independent of the "mixture rule."

Additionally, Ekco actively managed the pre-RCRA (November 1980) hazardous waste after the RCRA deadline. Active management of hazardous waste subjects an owner/operator to RCRA regulations. Mfgs. Chemical Assn. v. United States, 919 F. 2d 158 (D.C. Cir. 1990); United States v. Clow Water Systems, 701 F. Supp. 1345 (S.D. Ohio 1988). Ekco physically disturbed the pre-RCRA hazardous wastes by discharging millions of gallons of groundwater used as non-contact cooling water back into the surface impound and pumping groundwater from the surrounding

aquifer. Recent soil samples surrounding the surface impound indicated highly elevated levels of the characteristic heavy metals lead, chromium, and cadmium along with TCA and TCE. Therefore, Ekco was an owner/operator of a hazardous waste facility subject to interim status requirements under § 3006 of RCRA.

To ascertain liability under § 3008(a), the Court must finally determine which financial responsibility requirements are applicable to Ekco independent of the contractual obligations of the PCAO, and whether Ekco has complied with the statutory documentation provisions of the applicable requirements. Initially, the Court concludes that Ekco was required to comply with financial assurance for closure under 40 C.F.R. § 265.143. Without interim status or final permit, treatment, storage or disposal of hazardous waste at a facility is prohibited. 42 U.S.C. § 6925(a). After failing to submit its Part A Application for Permit, Ekco nevertheless was still subject to the financial assurance for closure regulations. 40 C.F.R. § 265.1; 50 Fed. Reg. 38,946. United States v. Allegan Metal Finishing Co., 696 F. Supp. at 286.

Ekco did not attempt to establish financial assurance for closure until June 28, 1990, long after the RCRA deadline, when AHP submitted the above-described Letter of Credit and Trust on behalf of Ekco. The Letter of Credit's deficiencies are undisputed. On September 9, 1992, AHP finally submitted documentation correcting the deficiencies in the Letter of Credit,

thereby satisfying its duty to establish financial assurance for closure. Therefore, Ekco was responsible for establishing financial assurance for closure under 40 C.F.R. 265.143.

The Court is aware of Ekco's arguments concerning the statements made by the OEPA purporting to extend and/or waive the above requirements. After careful review of the pertinent correspondence, the Court concludes that any representations made by OEPA officials are insufficient to remove Ekco's liability, but are to be considered as mitigating circumstances when assessing damages.

The Court is unable to find as a matter of law that Ekco was required to establish post-closure financial assurance under 40 C.F.R. § 265.145. Financial assurance for post-closure is required for disposal units. The Court is unable to ascertain whether hazardous wastes were "stored" or "disposed of" at the surface impound prior to RCRA. Even Ekco is unsure whether the surface impound was for storage or disposal of pre-1980 hazardous waste and post-1980 wastewater containing hazardous waste. Ekco repeatedly refers to the surface impoundment as a disposal unit, but enumerates a new strategy for disposing of hazardous materials off-site in an August 29, 1981 letter from AHP to OEPA. Therefore, the United States Motion for Partial Summary Judgment as to Liability is denied with respect to financial assurance for post-closure under 40 C.F.R. § 265.145 at this time.

The Court is also unable to find as a matter of law that Ekco was required to provide liability coverage for sudden

and non-sudden accidents pursuant to 40 C.F.R. § 265.147. In part due to the factual dispute outlined above and the regulation's language requiring "operation of the facility", the Court cannot apply the fact-driven case law in the area to ascertain whether liability coverage is required. Ekco argues that owner/operators had the option in 1980 of securing liability coverage for "operation of the facility" or ceasing operation (i.e. eliminating discharge of hazardous waste to surface impound under Ekco's interpretation). See In re Matter of Gordon Redd Lumber Co., No. 88-01-R (Ekco App. N). In response USEPA relies upon several cases requiring liability coverage for facilities storing hazardous waste after the interim status deadline. See U.S. T & S Brass and Bronze Works, 681 F. Supp. 314 (D. S.C. 1988); U.S. v. Clow Waster Systems, 701 F. Supp. 1345 (S.D. Ohio 1988).

After careful review of the voluminous case law provided and intensive research, the Court is unable to determine if liability coverage is required as a matter of law given the present state of the facts. The case nearest on point, Gordon Red Lumber Co., *supra*, involved off-site disposal of some hazardous wastes skimmed from the surface impound. Given the fact-specific nature of the pertinent case law and the lack of direction from the appropriate regulations, the Court is unable to enter judgment as a matter of law for either Ekco or the United States on their individual dispositive motions as to RCRA liability coverage apart from the PCAO contractual obligations.

THEREFORE, the United States' Motion for Partial Summary Judgment is granted in part with respect to the PCAO financial assurance for closure and post-closure under 40 C.F.R. §§ 265.143 and 145, and liability coverage under § 265.147. The United States Motion for Partial Summary Judgment is also granted in part as to financial assurance for closure under RCRA, but denied as to financial assurance for post-closure and liability coverage under RCRA apart from PCAO contractual obligations.

FURTHERMORE, Ekco's Motion for Partial Summary Judgment is denied in its entirety.

IT IS SO ORDERED.

Paul R. Matia
UNITED STATES DISTRICT JUDGE

FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

UNITED STATES OF AMERICA

Plaintiff

-vs-

EKCO HOUSEWARES, INC.

Defendant

JUDGE PAUL R. MATIA

CASE NO. 5:92CV1245

PARTIAL JUDGMENT ENTRY

This Court, having entered its Memorandum of Opinion and Order in the above captioned case, hereby enters judgment for the United States and against Ekco Housewares as to the following claims by the United States:

- 1) closure and post closure financial assurance (40 C.F.R. §§ 265.143 and 145) and liability coverage (40 C.F.R. § 265.147) contracted for in the PCAO;
- 2) financial assurance for closure (40 C.F.R. § 265.147) imposed under RCRA.

This matter shall go to trial as to all remaining claims not specifically adjudicated in the instant partial judgment entry.

Paul R. Matia
UNITED STATES DISTRICT JUDGE



State of Ohio Environmental Protection Agency

Northeast District Office

10 E. Aurora Road
Cincinnati, Ohio 44087-1969
(616) 425-9171
FAX (216) 487-0769

TRACKING - DHWM, CM&ES

TO GO ON: ☒ RCRIS ☐ FO LOG ☐ USEPA LOG ☐ CJ LOG ☐ FILE
ENTERED: ☒ RCRIS ☐ FO LOG ☐ USEPA LOG ☐ CJ LOG ☐ ONLY
RCRIS ENTRY CODES: (EVALUATION) _____ (ENFORCEMENT) _____
CEI ☐ CI ☒ OTHER _____ INITIAL NOV ☐ FOLLOW-UP NOV ☐
FULL RTC ☒ PARTIAL RTC ☐ LDR ☐ SENT TO USEPA: YES ☐ NO ☐

Governor

Donald R. Schregardus
Director

February 19, 1993

RE: EKCO HOUSEWARES, INC.
STARK COUNTY
OHD 045 205 424
RETURN TO COMPLIANCE

Mr. Thomas Shingleton
Ekco Housewares, Inc.
359 State Avenue, NW
P.O. Box 560
Massillon, OH 44658-0560

RECEIVED
WMD RECORD CENTER

JAN 06 1995

Dear Mr. Shingleton:

On February 16, 1993, Ohio EPA received Ekco Housewares' response to the January 13, 1993 notice of violation (NOV) letter. Based on the documentation provided, it appears that the facility has adequately addressed all of the violations cited in the January NOV.

Ohio EPA still requests that a copy of the contingency plan be submitted to my attention, Division of Hazardous Waste Management, Northeast District Office in addition to the copies Ekco Housewares is required to submit to the appropriate agencies.

If you should have any problems or questions, please feel free to contact me at (216) 963-1200.

Sincerely,

Karen L. Nesbit
Environmental Scientist
Division of Hazardous Waste Management

KLN.wk

cc: Harry Courtright, DHWM, NEDO
Laurie Stevenson, DHWM, CO

RECEIVED
FEB 22 1993



State of Ohio Environmental Protection Agency

Northeast District Office

10 E. Aurora Road
Twinsburg, Ohio 44087-1969
(216) 425-9171
FAX (216) 487-0769

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WMD RCRA
RECORD CENTER

TRACKING - UNIT, CRIS
TO GO ON: ☒ RCRIS ☐ TO LOG ☐ USEPA LOG ☐ CJ LOG ☐ FILE
ENTERED: ☒ RCRIS ☐ TO LOG ☐ USEPA LOG ☐ CJ LOG ☐ ONLY
RCRIS ENTRY CODES: (EVALUATION) 016 (ENFORCEMENT) 016
CEI ☒ CI ☐ OTHER ☐ INITIAL NOV ☐ FOLLOW-UP NOV ☐
FULL RTC ☐ PARTIAL RTC ☐ LDR ☒ SENT TO USEPA: YES ☐ NO ☐

SA

George V. Voinovich
Governor

December 15, 1992

RE: EKCO HOUSEWARES, INC.
STARK COUNTY
OHD 045 205 424
NOTICE OF VIOLATION

Mr. Thomas Shingleton
Ekco Housewares, Inc.
359 State Avenue, NW
P.O. Box 560
Massillon, OH 44658

CERTIFIED MAIL

Dear Mr. Shingleton:

On December 3, 1991, Murat Tukel and I representing the Ohio EPA's Division of Hazardous Waste Management, conducted a hazardous waste compliance inspection at your facility. Jeff Burman represented Ekco during this inspection. During the inspection the following violations were noted:

- 1) The facility has failed to have spill control equipment near the indoor tote storage as required by OAC 3745-65-62(C).

The facility shall place spill control equipment in this area.

- 2) The facility has failed to have the tote near the paint booths marked with the words "Hazardous Waste" and the date that accumulation began clearly marked on the tote as required by OAC 3745-52-34(A)(3) and OAC 3745-52-34(A)(2).

The facility shall mark the totes with the words "Hazardous Waste" and mark the date accumulation begins on each tote.

Failure to list specific violations in this communication does not relieve your facility from complying with all applicable regulations. Please be advised that past or present instances of non-compliance can continue as subjects of pending or future enforcement actions.

Ohio EPA will monitor compliance for these violations during the next facility annual compliance inspection. I have enclosed copies of my check sheets for your use.

Page - 2 -
Mr. Thomas Shingleton
December 15, 1992

If you should have any questions, please feel free to contact me
at (216) 963-1200.

Sincerely,



Karen L. Nesbit
Environmental Scientist
Division of Hazardous Waste Management

enclosure

KLN.wb

cc: Harry Courtright, DHWM, NEDO
~~Laurie Stevenson, DHWM, CO~~



**Attorney General
Lee Fisher**

January 26, 1993

TELEXED

Steven M. Oster, Esq.
Wilkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20036-3384

Re: *In the matter of: Ekco Housewares, Inc., Case No. 89-HW-008; Filing*

Dear Mr. Oster:

Enclosed is your courtesy copy of the time-stamped **Joint Stipulation and Settlement Agreement** with the Director's Closure Plan Approval filed with the Hearing Examiner in the above-captioned case.

It was a pleasure to make your acquaintance and to work with you to resolve this matter. Thank you for your cooperation throughout the process.

Sincerely,

A handwritten signature in cursive script, reading "Retanio A. Rucker".

Retanio A. Rucker
Assistant Attorney General
(614) 466-2766

Enclosure

cc: Mark Navarre, Esq., Ohio EPA/Legal
Randy Meyer, OEPA/DHWM/TAS
Paul Vandeméer, OEPA/DHWM/TAS
Karen Nesbit, OEPA/NEDO/DHWM

RECEIVED
JAN 29 1993

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO EPA
RECEIVED
93 JAN 25 PM 4:01
LEGAL RECORDS
SECTION

IN THE MATTER OF: : Case No. 89-HW-008
: :
EKCO HOUSEWARES, INC., : HEARING EXAMINER: :
: MICHAEL B. LEPP
Applicant. : :
: JOINT STIPULATION
: AND SETTLEMENT AGREEMENT
: :

PRELIMINARY STATEMENT

Applicant Ekco Housewares, Inc. ("Ekco") and the staff of the Ohio Environmental Protection Agency ("Staff"), having engaged in settlement discussions and reached an agreement, do hereby jointly stipulate that:

STIPULATION

1. On August 29, 1988, Applicant Ekco submitted to the Ohio Environmental Protection Agency ("Ohio EPA") pursuant to Rule 3745-66-12 of the Ohio Administrative Code ("OAC"), a closure plan for a hazardous waste surface impoundment located at 359 State Steet, Ext. NW, Massillon, Stark County, Ohio (hereinafter referred to as the "State Street facility"). The August 29th plan was submitted by Applicant to demonstrate that its proposal for closure complied with the requirements of OAC Rules 3745-66-11 and 12.

2. In accordance with OAC Rule 3745-66-12, the public was given the opportunity to submit written comments regarding Applicant Ekco's closure plan. The public comment period was extended by the Director of Environmental Protection ("Director") from September 19, 1988 to October 25, 1988. No

comments were received by the Ohio EPA regarding Applicant's closure plan for its State Street facility.

3. On January 4, 1989, the Director issued a proposed disapproval of Applicant Ekco's August 29, 1988 closure plan on the grounds that said plan did not meet the performance standard contained in OAC Rule 3745-66-11 and did not comply with the pertinent parts of OAC Rule 3745-66-12. The effective date of the Director's proposed disapproval was February 6, 1989.

4. On February 3, 1989, Applicant Ekco filed a timely request for an adjudication hearing seeking review of the Director's January 4, 1989 proposed action.

5. Applicant Ekco and the Staff have engaged in settlement discussions since the inception of the case *sub judice*. Said discussions have produced an agreement by these parties as to how this case shall be disposed of and, subsequently, proceed.

WHEREAS, Applicant Ekco and the Staff wish to conclude these proceedings without an adjudication of any questions of fact or law by entering into this Settlement Agreement.

SETTLEMENT AGREEMENT

THEREFORE, Applicant Ekco and the Staff have agreed as follows:

1. Applicant Ekco agrees to immediately and voluntarily dismiss its February 3, 1989 request for an adjudication hearing.

2. Pursuant to OAC Rule 3745-47-05(B)(2)(a), the Director agrees to amend the January 4, 1989 proposed disapproval of Applicant Ekco's closure plan for the State Street facility. Specifically, the Director agrees to issue Applicant a closure

plan approval for said facility in a form and with language identical to that in Attachment "A", which is incorporated by reference as if fully rewritten herein.

3. It is understood by the parties that the closure plan approval attached to this Settlement Agreement will be issued by the Director as a final action.

4. Applicant Ekco agrees to the issuance of the proposed closure plan approval as a final action, and waives its right to contest the lawfulness and/or reasonableness of said final action before the Ohio EPA, the Environmental Board of Review and/or any court of competent jurisdiction.

5. The entering of this Stipulation and Settlement Agreement shall in no way be construed as an admission by the Staff that the Director's January 4, 1989 proposed action, as originally issued, was not lawful and/or reasonable.

6. The entering of the Stipulation and Settlement Agreement shall in no way be construed as an admission by Applicant Ekco that the Director's January 4, 1989 proposed action, as originally issued, was lawful and/or reasonable.

7. The parties acknowledge and agree that the complete terms of this Settlement Agreement are set forth herein.

WITNESS WHEREOF, the following signatures as binding upon the parties:

Respectfully submitted,



STEVEN M. OSTER, ESQ.

(District of Columbia Bar No. 376030)
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, NW
Washington, D.C. 20036-3384
(202) 328-8000

Attorney for Applicant Ekco
Housewares, Inc.

LEE FISHER
ATTORNEY GENERAL OF OHIO



RETANIO A. RUCKER (0039744)
Assistant Attorney General

Environmental Enforcement
30 East Broad Street, 25th Fl.
Columbus, Ohio 43266-0410
(614) 466-2766

Attorney for the Staff of the
Ohio Environmental Protection
Agency

2545E.11-14



State of Ohio Environmental Protection Agency

ATTACHMENT "A"

P.O. Box 1049, 1800 WaterMark Dr.
Columbus, Ohio 43268-0149
(614) 644-3020
FAX (614) 644-2329

George V. Voinovich
Governor
Donald R. Schregardus
Director

CLOSURE PLAN APPROVAL

CERTIFIED MAIL

RE: CLOSURE PLAN APPROVAL
Ekco Housewares, Inc.
OHD 045 205 424

Ms. Pat Wells
American Home Products
685 Third Avenue
8th Floor
New York, NY 10017

Dear Ms. Wells:

On August 16, 1988, Ekco Housewares, Inc. (Ekco) submitted to Ohio EPA a closure plan for a hazardous waste surface impoundment located at 359 State Street NW, Massillon, Stark County, Ohio. On January 4, 1989, Ohio EPA disapproved the August 16, 1988 closure plan. Ekco subsequently filed its request for an adjudication hearing on February 3, 1989. Ohio EPA and Ekco have engaged in settlement discussions ever since.

Ekco submitted a treatability study on August 10, 1990. Revisions to the closure plan were received on December 6, 1991, July 23, 1992 and October 13, 1992. The closure plan was submitted pursuant to Rule 3745-66-12 of the Ohio Administrative Code (OAC) in order to demonstrate that Ekco Housewares Inc.'s proposal for closure complies with the requirements of OAC Rules 3745-66-11 and 3745-66-12.

The public was given the opportunity to submit written comments regarding the closure plan of Ekco Housewares, Inc. in accordance with OAC Rule 3745-66-12. No comments were received by Ohio EPA in this matter.

Based upon review of Ekco's submittal and subsequent revisions, I conclude that the closure plan for the hazardous waste facility at Ekco Housewares, Inc., as modified, herein meets the performance standard contained in OAC Rule 3745-66-11 and complies with the pertinent parts of OAC Rule 3745-66-12.

Ms. Pat Wells
American Home Products
Ekco Housewares, Inc.
Page Two

The closure plan, as modified, submitted to Ohio EPA by Ekco Housewares, Inc. is hereby approved with the following condition:

Ekco shall ensure that the background clean standards presented for the fill material are applied only to fill material affected by the impoundment. If Ekco discovers natural soils (clay, till, etc.) which may be contaminated, then a background clean standard shall be determined for the natural soil. Under no circumstance shall the background clean standard for the fill be applied to non-fill (natural) soils, except where intermingling of fill and natural soils is encountered. Background soil samples from the non-fill (natural) soils shall be collected on site in order to develop a background clean standard for natural soils. Ekco shall submit the number and location of these background soil samples to the Ohio EPA Northeast District Office site inspector for review and approval prior to obtaining the actual samples.

Please be advised that approval of this closure plan, as modified, does not release Ekco Housewares, Inc. from any responsibilities as required under the Hazardous and Solid Waste Amendments of 1984 regarding corrective action for all releases of hazardous waste of constituents from any solid waste management unit, regardless of the time that the waste was placed in the unit.

Notwithstanding compliance with the terms of the modified closure plan, the Director may, on the basis of any information that there is or has been a release of hazardous waste, hazardous constituents, or hazardous substances into the environment, issue an order pursuant to Section 3734.20 et seq of the Revised Code or Chapters 3734 or 6111 of the Revised Code requiring corrective action or such other response as deemed necessary; or initiate appropriate action; or seek any appropriate legal or equitable remedies to abate pollution or contamination or to protect public health or safety or the environment.

Ms. Pat Wells
American Home Products
Ekco Housewares, Inc.
Page Three

Nothing here shall waive the right of the Director to take action beyond the terms of the modified closure plan pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C, §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499 ("CERCLA") or to take any other action pursuant to applicable Federal or State law, including but not limited to the right to issue a permit with terms and conditions requiring corrective action pursuant to Chapters 3734 or 6111 of the Revised Code; the right to seek injunctive relief, monetary penalties and punitive damages, to undertake any removal, remedial, and/or response action relating to the facility, and to seek recovery for any costs incurred by the Director in undertaking such actions.

When closure is completed, the Ohio Administrative Code Rule 3745-66-15 requires the owner or operator of a facility to submit to the Director of the Ohio EPA certification by the owner or operator and an independent, registered professional engineer that the facility has been closed in accordance with the approved closure plan. The certification by the owner or operator shall include the statement found in OAC Rule 3745-50-42(D). These certifications should be submitted to: Ohio Environmental Protection Agency, Division of Hazardous Waste Management, Attn: Thomas Crepeau, Data Management Section, P.O. Box 1049, Columbus, Ohio 43266-0149.

Sincerely,

Donald R. Schregardus
Director

DRS/PV/pas

cc: Tom Crepeau, DHWM Central File, Ohio EPA
Randy Meyer, Ohio EPA, DHWM
Section Chief, Ohio Permit Section
USEPA - Region V
Karen Nesbit, NEDO, Ohio EPA
Retanio Rucker, Assistant Attorney General

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,
Plaintiff,

v.

EKCO HOUSEWARES, INC.,
Defendant.

FILED
1992 JUN 22 PM 3:45
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CINCINNATI
5:92 CV 1245

Civil Action No.

JUDGE MATIA

COMPLAINT

Plaintiff, the United States of America, by authority of the Attorney General of the United States, at the request of the Administrator of the United States Environmental Protection Agency (hereinafter referred to as "U.S. EPA") and by and through its undersigned attorneys, alleges the following:

STATEMENT OF THE CASE

1. This is a civil action for the imposition of permanent injunctive relief and for assessment of civil penalties pursuant to the Resource Conservation and Recovery Act of 1976, as amended (hereinafter referred to as "RCRA"), 42 U.S.C. §§ 6901 et seq. This action arises from the failure of the Defendant Ekco Housewares, Inc., to comply with RCRA and regulations promulgated pursuant thereto, including Federally approved and enforceable regulations pertaining to hazardous waste management in the State of Ohio, as set forth in Ohio Administrative Code ("O.A.C.") Chapters 3745-49 through 3745-69. This action also

arises from the failure of Ekco Housewares, Inc. to comply with a Partial Consent Agreement and Order entered into between U.S. EPA and Ekco Housewares, Inc. on November 4, 1987, pursuant to RCRA Section 3008(a) and (g), 42 U.S.C. § 6928(a) and (g).

JURISDICTION, VENUE, AND NOTICE

2. This Court has jurisdiction over the subject matter of this action pursuant to RCRA Section 3008(a)(1), 42 U.S.C. § 6928(a)(1), and 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue properly lies in this judicial district pursuant to RCRA Section 3008(a), 42 U.S.C. § 6928(a), and 28 U.S.C. § 1391(b), because the violations complained of herein occurred at and concern the facility which is located in the Northern District of Ohio.

4. Authority to bring this action is vested in the United States by RCRA Section 3008(a), 42 U.S.C. § 6928(a).

5. Notice of the commencement of this action has been provided to the State of Ohio in accordance with RCRA Section 3008(a)(2), 42 U.S.C. § 6928(a)(2).

DEFENDANT

6. Defendant, Ekco Housewares, Inc. ("Ekco"), is a corporation organized under the laws of the State of Delaware. Since 1945, Ekco has been the "owner" and/or an "operator" of a facility that manufactures metal bakeware and is located at 359 State Avenue Extension, N.W., Massillon, Stark County, Ohio ("the Facility").

7. At all times relevant to this complaint, Ekco has been a "person" within the meaning of RCRA Section 1004(15), 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10.

8. Ekco has engaged in the "storage," "treatment," or "disposal" of "hazardous waste" at the facility as those terms are defined at Section 1004 of RCRA, 42 U.S.C. § 6903, and 40 C.F.R. § 260.10, since November 19, 1980.

STATUTORY AND REGULATORY FRAMEWORK

9. RCRA establishes a comprehensive program for the regulation of the generation, transportation, treatment, storage and disposal of hazardous wastes. Pursuant to its authority under Section 3004(a) of RCRA, 42 U.S.C. § 6924(a), U.S. EPA has promulgated regulations, codified at 40 C.F.R. Parts 260-272, identifying and listing hazardous wastes, and establishing standards applicable to persons and facilities that, inter alia, treat, store, and dispose of hazardous wastes ("TSD" facilities).

10. RCRA Section 3005, 42 U.S.C. § 6925, generally prohibits the operation of any TSD facility except in accordance with a RCRA permit.

11. RCRA Section 3005(e), 42 U.S.C. § 6925(e), provides that the owner or operator of a TSD facility that was in existence on November 19, 1980, may obtain "interim status" to continue operating such facility until final action is taken with respect to its RCRA permit application, if such owner or operator (a) files with EPA, in accordance with RCRA Section 3010(a),

42 U.S.C. § 6930(a), a timely notice stating the location and general description of its activities and the hazardous wastes handled by the facility, and (b) submits a timely application for a hazardous waste permit authorizing such activities.

12. RCRA Section 3004, 42 U.S.C. § 6924, authorizes the Administrator of U.S. EPA to promulgate regulations establishing standards for TSD facilities, including facilities that were in existence on the date of promulgation of such regulations. Pursuant to this authority, U.S. EPA promulgated regulations applicable to TSD facilities that were in existence prior to November 19, 1980. Such regulations are codified at 40 C.F.R. Part 265.

13. The regulations found at 40 C.F.R. § 265.1 provide that the standards established in 40 C.F.R. Part 265 apply to the owners and operators of TSD facilities that were in existence on November 19, 1980, whether or not such TSD facilities fulfilled the conditions for "interim status" set forth in RCRA Section 3005(e), 42 U.S.C. § 6925(e).

14. Section 3004(a) and (t) of RCRA, 42 U.S.C. § 6924(a) and (t), provides that owners and operators of TSD facilities are required to establish financial responsibility for the continued operation of that facility consistent with the degree and duration of risks associated with the facility.

15. To implement the financial responsibility requirements of Section 3004(a) and (t) of RCRA, 42 U.S.C.

§ 6924(a) and (t), U.S. EPA has promulgated regulations at Subpart H of Part 265, 40 C.F.R. §§ 265.140 through 265.150.

16. Pursuant to 40 C.F.R. § 265.143, an owner or operator of a hazardous waste facility, including a TSD facility in existence on November 19, 1980, must establish financial assurance for closure of its facility based on the estimated cost of such closure, which is to be determined pursuant to 40 C.F.R. § 265.142.

17. Pursuant to 40 C.F.R. § 265.145, an owner or operator of a facility with a hazardous waste disposal unit must establish financial assurance for post-closure care of the disposal unit based on the estimated cost of such post-closure care, which is to be determined pursuant to 40 C.F.R. § 265.144.

18. Pursuant to 40 C.F.R. § 265.147, an owner or operator of a TSD facility must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden or nonsudden accidental occurrences arising from operations of the facility. The owner or operator must have and maintain liability coverage for sudden and nonsudden accidental occurrences in the manner and amounts specified by 40 C.F.R. § 265.147.

19. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and 40 C.F.R. § 271.1 et seq., U.S. EPA may, in appropriate circumstances, authorize a state to administer the RCRA hazardous waste management program in that state in lieu of the federal hazardous waste management program.

20. Pursuant to 40 C.F.R. § 271.3, where a state's hazardous waste management program meets the requirements of Section 3006 of RCRA, 42 U.S.C. § 6926, and is approved by U.S. EPA, that state is authorized to administer and enforce its hazardous waste management program in lieu of the federal program.

21. On June 30, 1989, pursuant to RCRA Section 3006, 42 U.S.C § 6926, U.S. EPA granted final authorization to the State of Ohio to administer and enforce its RCRA hazardous waste management program within Ohio, in lieu of the federal program. The State of Ohio administers its hazardous waste management program through the Ohio Environmental Protection Agency (hereinafter the "OEPA").

22. Ohio's hazardous waste management program is codified at Ohio Administrative Code ("O.A.C.") Chapters 3745-49 through 3745-69.

23. The regulations of the State of Ohio addressing the financial responsibility requirements imposed on owners and operators of TSD facilities in existence on November 19, 1980, are promulgated at O.A.C. Rule 3745-66-40 et seq.

24. Pursuant to O.A.C. Rule 3745-66-43, an owner or operator of a hazardous waste facility, including a TSD facility in existence on November 19, 1980, must establish financial assurance for closure of its facility based on the estimated cost of such closure, which is to be determined pursuant to O.A.C. Rule 3745-66-42.

25. Pursuant to O.A.C. Rule 3745-66-45, an owner or operator of a facility with a hazardous waste disposal unit must establish financial assurance for post-closure care of the disposal unit based on the estimated cost of such post-closure care, which is to be determined pursuant to O.A.C. Rule 3745-66-44.

26. Pursuant to O.A.C. Rule 3745-66-47, an owner or operator of a TSD facility must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden and nonsudden accidental occurrences arising from operations of the facility. The owner or operator must have and maintain liability coverage for sudden and nonsudden accidental occurrences in the manner and amounts specified by O.A.C. Rule 3745-66-47.

27. RCRA Section 3008, 42 U.S.C. § 6928, authorizes U.S. EPA to institute enforcement proceedings concerning violations of RCRA and the regulations promulgated thereunder. RCRA Section 3008(a)(1), 42 U.S.C. § 6928(a)(1), provides:

[W]henever on the basis of any information the Administrator determines that any person has violated or is in violation of any requirement of this subchapter, the Administrator may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both, or the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

28. Section 3008(c) of RCRA, 42 U.S.C. § 6928(c), provides that if a person fails to take corrective action within

the time specified in an administrative compliance order issued by the U.S. EPA, U.S. EPA may assess a penalty of up to \$25,000 for each day of continued noncompliance.

29. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), provides that any person who violates any requirement of RCRA, shall be liable to the United States for a civil penalty of up to \$25,000 per day for each day of each violation.

GENERAL ALLEGATIONS

30. Both before and after November 19, 1980, Ekco has maintained and used a surface impoundment, as that term is defined in 40 C.F.R. § 260.10, for the treatment, storage, or disposal of hazardous wastes at the facility.

31. During its operation of the facility, Ekco's manufacturing process has generated various waste products, including, but not limited to, spent halogenated solvents used in degreasing.

32. Under the authority delegated to it at Section 3001 of RCRA, 42 U.S.C. § 6921, U.S. EPA has determined that spent halogenated solvents used in degreasing are a hazardous waste, as defined at 40 C.F.R. Part 261, Subparts C and D. U.S. EPA has assigned the alphanumeric code F001 to such spent halogenated solvent wastes (40 C.F.R. § 261.31).

33. Both before and after November 19, 1980, Ekco discharged or otherwise placed spent halogenated solvent wastes, including hazardous waste Number F001, into a surface impoundment

as that term is defined in 40 C.F.R. § 260.10, which is located within the facility.

34. Ekco discharged spent halogenated solvent wastes, including hazardous waste Number F001, to the surface impoundment located at the facility until about 1985.

35. On or about ^{date of notice was 2/1/80} October 19, 1980, Ekco gave notice to U.S. EPA, pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations promulgated pursuant thereto, that it was treating, storing, or disposing of hazardous substances, as defined in RCRA, at its Massillon, Ohio facility.

36. On and after November 19, 1980, Ekco treated, stored, or disposed of hazardous wastes in the surface impoundment located at the facility.

37. Ekco failed to submit to U.S. EPA, by November 19, 1980, Part A of its application for a RCRA permit to treat, store, and dispose of hazardous waste at the Massillon facility, as required by 40 C.F.R. § 270.10 and Section 3005 of RCRA, 42 U.S.C. § 6925.

38. As a consequence of its failure to submit Part A of a permit application to treat, store, and dispose of hazardous waste at the facility by November 19, 1980, Ekco failed to obtain interim status authorizing continued treatment, storage, or disposal of hazardous wastes at the facility.

39. As an owner and/or operator of a hazardous waste treatment, storage, or disposal facility that was in existence on November 19, 1980, but which failed to file Part A of its permit

application as required by 40 C.F.R. § 270.10, Ekco was subject to the regulations promulgated by U.S. EPA at 40 C.F.R. Part 265, requiring closure of the surface impoundment and including the financial responsibility requirements promulgated at 40 C.F.R. § 265.143, § 265.145, and § 265.147.

40. On and after June 30, 1989, the date upon which the State of Ohio received final authorization to administer and enforce its hazardous waste management program, Ekco was subject to the financial responsibility requirements promulgated at O.A.C. Rules 3745-66-43, 3745-66-45, and 3745-66-47.

ENFORCEMENT HISTORY

41. On November 5, 1986, U.S. EPA filed an Administrative Complaint, Findings of Violation, and Compliance Order, Docket No. V-W-87-R-008 ("the Administrative Complaint") against Ekco.

42. Among the Findings of Violation contained in the Administrative Complaint was Ekco's failure to comply with the financial assurance requirements promulgated at 40 C.F.R. § 265.140-150.

43. The Compliance Order, which was issued as part of the Administrative Complaint, ordered Ekco, inter alia, to submit a closure plan for the surface impoundment located at its facility, to implement that closure plan following approval by U.S. EPA, and to comply with the financial responsibility requirements for closure until closure would be certified,

pursuant to 40 C.F.R. §§ 265.140 through 265.151. The Administrative Complaint also proposed to assess a civil penalty against Ekco.

44. On or about November 4, 1987, U.S. EPA and Ekco entered into a Partial Consent Agreement and Order ("PCAO") in partial resolution of the action initiated by the November 5, 1986, Administrative Complaint. A copy of the PCAO is attached hereto as Exhibit "A" and incorporated herein by reference.

45. The PCAO required, inter alia, that Ekco submit a closure plan for the surface impoundment at the facility to U.S. EPA within 90 days of the effective date of the PCAO.

46. The PCAO further required that, at the time of the closure plan's submission, Ekco comply with the financial responsibility requirements for closure until closure was certified, pursuant to 40 C.F.R. §§ 265.140 through 265.151.

47. On February 22, 1988, U.S. EPA extended the date for submission of the closure plan for a period of 60 days, or until April 22, 1988.

48. From at least April 22, 1988, Ekco was required to comply with the financial assurance requirements provided for at 40 C.F.R. §§ 265.140-150.

49. The PCAO also provided that, if Ekco failed to comply with any requirement contained in the PCAO, for each day of noncompliance with the PCAO, Ekco could be subject to the statutory penalty stated in Section 3008(c) of RCRA, 42 U.S.C. § 6928(c).

FIRST CLAIM FOR RELIEF
(Violations of the 1987 PCAO)

50. The United States repeats the allegations contained in Paragraphs 1 through 49, above, and hereby incorporates them by reference as if fully stated herein.

51. Ekco did not comply with the financial responsibility requirements of 40 C.F.R. §§ 265.140 through 265.150 by April 22, 1988, the extended date for submission of the closure plan.

81 52. On or about June 28, 1990, Defendant and American Home Products Corporation submitted to the OEPA a Letter of Credit and a Standby Trust Agreement in an effort to satisfy Ekco's obligation to possess financial assurance for closure and for post-closure care of the facility.

53. The Letter of Credit and Standby Trust Agreement failed to meet the requirements of the PCAO regarding financial responsibility for closure and post closure care.

54. The Letter of Credit and Standby Trust Agreement which Ekco submitted to OEPA, did not provide financial assurance for closure in accordance with 40 C.F.R. § 265.143, and it did not provide financial assurance for post-closure care in accordance with 40 C.F.R. § 265.145.

55. The Letter of Credit and Standby Trust Agreement also failed to meet the requirements of the Ohio regulations at O.A.C. Rules 3745-66-40 through 50 concerning financial responsibility for closure and post-closure care.

56. On behalf of Ekco, American Home Products Corporation submitted to the OEPA a copy of Ekco's comprehensive general liability insurance policy for the facility on April 24, 1990.

57. The general liability insurance policy submitted by American Home Products on April 24, 1990, failed to provide the necessary coverage required by the PCAO, and the underlying federal regulation at 40 C.F.R. § 265.147.

58. The general liability insurance policy submitted by American Home Products on April 24, 1990, also failed to provide the coverage required by O.A.C. Rule 3745-66-47.

59. Ekco failed to comply with the financial responsibility requirements for closure, pursuant 40 C.F.R. §§ 265.140 through 265.151 within ninety days of the effective date of the PCAO or by the extended date for the submission of the closure plan, April 22, 1988.

60. From at least April 22, 1988, until present Ekco has been in continuous violation of the provision of the PCAO.

61. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), Defendant should be assessed a penalty of up to \$25,000 per day for each day of noncompliance with the requirements of the PCAO.

62. Unless restrained, Ekco will continue to violate the provisions of the PCAO. Defendant is subject to injunctive relief, pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g).

SECOND CLAIM FOR RELIEF

63. The United States repeats the allegations contained in Paragraphs 1 through 62, above, and hereby incorporates them by reference as if fully stated herein.

64. During the period from at least April 22, 1988 until June 30, 1989, Ekco failed to establish and maintain financial assurance for closure of its Facility in accordance with the requirements of 40 C.F.R. § 265.143.

65. As a result of the failure referred to in the preceding paragraph, Ekco has been in continuous violation of the provisions of 40 C.F.R. § 265.143 from April 22, 1988 until June 30, 1989.

66. In the period since June 30, 1989, Ekco failed to establish financial assurance for closure of its Facility in accordance with the provisions of O.A.C. Rule 3745-66-43.

67. As a result of the failure referred to in the preceding paragraph, Ekco has been in continuous violation of the provisions of O.A.C. Rule 3745-66-43 from June 30, 1989 until present.

68. During the period from at least April 22, 1988 until June 30, 1989, Ekco failed to establish and maintain financial assurance for post-closure care of its Facility in accordance with the requirements of 40 C.F.R. § 265.145.

69. As a result of the failure referred to in the preceding paragraph, Ekco was in continuous violation of the

provisions of 40 C.F.R. § 265.145 from April 22, 1988 until June 30, 1989.

70. In the period since June 30, 1989, Ekco failed to establish financial assurance for post-closure care of its Facility in accordance with the provisions of O.A.C. Rule 3745-66-45.

71. As a result of the failure referred to in the preceding paragraph, Ekco has been in continuous violation of the provisions of O.A.C. Rule 3745-66-45 from June 30, 1989 until present.

72. During the period from at least April 22, 1988 until June 30, 1989, Ekco did not establish and maintain liability coverage for sudden and non-sudden accidental occurrences in accordance with the provisions of 40 C.F.R. § 265.147.

73. As a result of the failure referred to in the preceding paragraph, Ekco was in continuous violation of the provisions of 40 C.F.R. § 265.147 from April 22, 1988 until June 30, 1989.

74. In the period since June 30, 1989, Ekco failed to establish and maintain liability coverage for sudden and non-sudden accidental occurrences at its Facility in accordance with the provisions of O.A.C. Rule 3745-66-47.

75. As a result of the failure referred to in the preceding paragraph, Ekco has been in continuous violation of the

provisions of O.A.C. Rule 3745-66-47 from June 30, 1989 until present.

76. For each of the violations described in this claim for relief, Ekco is liable to the United States for a civil penalty of up to \$25,000 per day for each day of non-compliance, pursuant to Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

77. Unless restrained, Ekco will continue to violate the provisions of the PCAO and the applicable requirements of O.A.C. Rules 3745-66-43, 3745-66-45, and 3745-66-47. Defendant is subject to injunctive relief, pursuant to Sections 3008(a) and (g) of RCRA, 42 U.S.C. §§ 6928(a) and (g).

REQUEST FOR RELIEF

Wherefore, Plaintiff, the United States of America, respectfully requests that this Court:

1. Order Defendant to achieve and maintain compliance with the financial responsibility requirements set forth in the PCAO and in O.A.C. Rules 3745-66-43, 3745-66-45, and 3745-66-47;

2. Assess a civil penalty against Defendant in an amount up to \$25,000 per day for each violation of the PCAO;

3. Assess a civil penalty against Defendant in an amount up to \$25,000 per day for each violation by the Defendant of 40 C.F.R. §§ 265.143, 265.145, and 265.147 during the period prior to June 30, 1989 and each violation by Defendant of O.A.C. Rules 3745-66-43, 3745-66-45, and 3745-66-47 since June 30, 1989;

4. Award Plaintiff, the United States of America, the costs and disbursements of this action; and

5. Award Plaintiff such other relief as this Court deems just and proper.

Respectfully submitted,

Barry M. Hartman
 BARRY M. HARTMAN
 Acting Assistant Attorney General
 Environment and Natural Resources
 Division
 U.S. Department of Justice
 Washington, D.C. 20530

JOYCE J. GEORGE
 United States Attorney
 Northern District of Ohio

By: *Arthur I. Harris*
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 Washington, D.C. 20044
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LAWRENCE I. SPERLING
U.S. Environmental Protection Agency
Office of Enforcement
RCRA Division (LE 134S)
401 M Street S.W.
Washington D.C. 20460

EXHIBIT "A"

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:)	DOCKET NO. V-W-R-87-008
)	
EKCO HOUSEWARES, INC.)	PARTIAL CONSENT AGREEMENT AND
P.O. BOX 560)	ORDER
MASSILLON, OHIO 44646)	
EPA I.D. NO. OHD 045-205-424)	

PREAMBLE

On November 6, 1986, a Complaint was filed in this matter pursuant to Section 3008 of the Resource Conservation and Recovery Act as amended (RCRA), 42 U.S.C. §6928, and the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR Part 22. The Complainant is the Director of the Waste Management Division, Region V, United States Environmental Protection Agency (U.S. EPA). The Respondent is Ekco Housewares, Inc.

STIPULATIONS

The parties, desiring to settle this action, enter into the following stipulations:

1. Respondent has been served a copy of the Complaint, Finding of Violation and Compliance Order (Docket No. V-W-R-87-008) in this matter.

2. Respondent is a Delaware corporation whose registered agent is Prentice-Hall Corporation System, Inc. Respondent owns and operates a facility located at 359 State Avenue Extension, N.W., Massillon, Ohio 44646.

3. For the purposes of this agreement, Respondent admits the jurisdictional allegations contained in the Complaint.

4. Respondent neither admits nor denies the specific factual allegations contained in the Complaint, other than admissions made in its Answer.

5. Respondent consents to the issuance of the Order herein after set forth.

6. This Order shall become effective on the date it is filed with the Regional Hearing Clerk.

7. This Partial Consent Agreement and Order (PCAO) addresses only paragraphs A-C of the Complaint herein and does not address the amount of the penalty assessed therein.

8. This Order explicitly reserves the right of U.S. EPA to seek the full penalty assessed in the Complaint as a result of Respondent's alleged RCRA violations, as well as the right of the Respondent to contest the amount of any penalty sought to be assessed for alleged RCRA violations.

ORDER

Based on the foregoing stipulations, the parties agree to the entry of this PCAO.

A. Respondent shall immediately, upon this Order becoming effective, cease all treatment, storage or disposal of any hazardous waste except such treatment, storage or disposal as shall be in compliance with the Standards for Hazardous Waste Treatment, Storage, and Disposal Facilities, except as provided for in Paragraph B below.

B. The Respondent shall, within the time periods set forth herein, achieve compliance with the requirements in the numbered paragraphs below:

1. Submit to the U.S. EPA within ninety (90) days of the effective date of this Order, a closure plan for the surface impoundment located at Respondent's Massillon, Ohio facility prepared in accordance with the standards for such plans contained in 40 CFR 265.111 through 265.120 and 40 CFR 265.228. The closure plan shall include but not be limited to a sampling and analysis plan to determine the extent of hazardous waste and constituents in the surface impoundment and in the underlying and surrounding soils and groundwater. The plan shall also provide for the treatment and/or removal and proper disposal of all hazardous waste in the surface impoundment including all contaminated soils and/or groundwater. The U.S. EPA will review this closure plan and either approve, disapprove or modify the plan.

2. Upon approval and/or modification of the closure plan by the U.S. EPA, the Respondent shall immediately initiate and complete the activities in the plan in accordance with the schedule contained therein and any modification made by U.S. EPA.

3. Develop and submit a plan for a groundwater quality assessment program pursuant to 40 CFR 265.93 within fifty six (56) days of the effective date of this Order.

The U.S. EPA will review this groundwater quality assessment monitoring plan and either approve, disapprove or modify the plan.

4. Upon approval and/or modification of the groundwater quality assessment plan by U.S. EPA, the Respondent shall immediately initiate and complete the activities in the plan in accordance with the schedule contained therein and any modification made by U.S. EPA and shall fully comply with the provisions of Subpart F of 40 CFR Part 265.

5. Comply with the financial responsibility requirements for closure until closure has been certified, pursuant to 40 CFR 265.140 through 265.151, at the time of submission of the closure plan for the surface impoundment pursuant to Paragraph B (1).

6. Within thirty (30) days of the receipt of U.S. EPA's notification of disapproval of either plan, unless otherwise extended by mutual agreement of the parties, Respondent shall amend and submit to U.S. EPA for approval, a revised plan. U.S. EPA's disapproval of the subsequent revision of either plan submitted by Respondent shall be deemed a violation of this PCAO.

7. Respondent agrees to enter into good faith negotiations with U.S. EPA regarding a RCRA Facility Investigation (RFI) and Corrective Measures Study (CMS) pursuant to Section 3008(h) of RCRA 42 U.S.C. §6928(h) for its Massillon, Ohio facility.

Failure to comply with any requirement of this PCAO may subject Respondent to liability for the statutory penalty as stated in RCRA Section 3008(c) for each day of continued non-compliance with the terms of this Partial Consent Agreement and Final Order. U.S. EPA is authorized to assess such penalties pursuant to RCRA Section 3008(c).

This PCAO constitutes a partial settlement and partial disposition of the Complaint filed in this case. This PCAO does not address the amount of penalty assessed in the Complaint

and both parties reserve all rights with respect to the assessment of a penalty.

Notwithstanding any other provision of the Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. §6973, or other statutory authority should the U.S. EPA determine that the handling of solid waste or hazardous waste at the facility presents an imminent and substantial endangerment to human health or the environment. Respondent reserves the right to contest any allegation, finding, or determination that the handling of solid waste or hazardous waste at the facility presents an imminent and substantial endangerment to human health or the environment.


SIGNATORIES

Each undersigned representative of a signatory to this Partial Consent Agreement and Final Order consisting of 6 pages certifies that he or she is fully authorized to enter into the terms and conditions of this Partial Consent Order and to legally bind each signatory to this document.

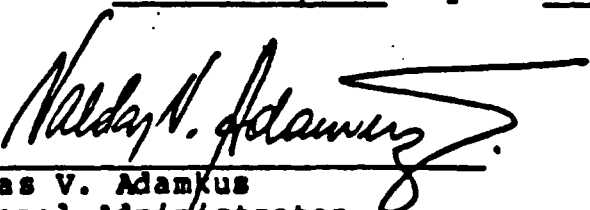
Agreed this 15 day of October, 1987.

By: 
Ekco Housewares, Inc.
Respondent

Agreed this 2nd day of November, 1987.

By: 
Basil G. Constantelos
Waste Management Division
Complainant
U.S. Environmental Protection Agency
Region V

The above being agreed and consented to, it is so ordered this 4th day of November, 1987.

By: 
Valdas V. Adamkus
Regional Administrator
U.S. Environmental Protection Agency
Region V

OHIO EPA, EMERGENCY RESPONSE GROUP
DISTRICT OFFICE INVESTIGATION REPORT

SPILL #: 02-76-0576
DATE SUBMITTED: 02/24/92

STATUS: F02
ON SCENE COORDINATOR: BRUCE C. MILLER

REPORTED: 11:20 02/18 DISCOVERED: OCCURRED: 08:30 02/18
REPORTED BY: ED COX PHONE: 216 456 4745

-----ENTITY-----

COMPANY: EKCO HOUSEWARES INC.
DIVISION:
P.O.BOX: BOX 560 359 STATE AVE EXTENSION, NW
CITY, STATE: MASSILLON, OH
ZIP CODE: 44648 COMPANY PHONE: 216 832 5026
SPCC PLAN REQUIRED: SPCC PLAN IN EFFECT:

REP. CONTACTED: TOM SHINGLETON TITLE: PLANT MANAGER
PHONE: 216 832 5026 EXT:

----- SPILL LOCATION -----

COUNTY: STARK
CITY: MASSILLON
TOWNSHIP:
STREET LOCATION: 359 STATE AVE, OFF 3RD ST.

LATITUDE: LONGITUDE:

-----PRODUCT(S) INFORMATION-----

PRODUCT /	AMOUNT SPILLED /	AMOUNT RECOVERED
TRICHLOROETHANE	350 G	UNKNOWN

CAUSE: PIPE RUPTURE
SOURCE: AST PIPING
WATERWAY: NEWMAN CREEK
WATERSTAGE: A LENGTH OF WATERWAY: 0.2 (?)
LAND AREA: 600 SQFT
PRE-RESPONSE ACTION:

----- REFERRAL(S) -----

NAME: / AGENCY: / DATE:

----- EXPENSES -----

SUPPLIES:
PHOTOS:
FIELD TESTS:
LAB SAMPLES:

----- COMMENTS -----

02/18/92 MET TOM SHINGLETON, PLANT MANAGER AND JEFF BERMAN, PLANT CHEMIST ON SCENE. 6,000 GAL. A.S.T. (DIKED) WITH NEWLY INSTALLED ABOVE GROUND PLUMBING. COMPANY WAS TESTING NEW PLUMBING/PUMP. PUMP RAN 5-10 MIN. W/O ANY PRODUCT SHOWING UP AT DELIVERY POINT INSIDE BUILDING. STRONG SMELL ALERTED OPERATORS TO A POSSIBLE LEAK. A UNION IN THE NEW PLUMBING RUNNING ALONG THE OUTSIDE WALL OF THE PLANT HAD FAILED, DISCHARGING ABOUT 350 GAL. OF PRODUCT ONTO THE GROUND. SOME PRODUCT MIGRATED INTO THE DOWNSPOUT/FOOTER DRAIN SYSTEM WHICH TIES INTO THE PLANT'S NPDES OUTFALL AT NEWMAN CREEK. SPILL OCCURRED AROUND 08:30. MANAGEMENT NOTIFIED FD, LEPC, NRC, OEPA BETWEEN 10:00 AND 11:30 IN VIOLATION OF SARA III 30 MIN. REPORTING PERIOD.
I RECOMMENDED (AND COMPANY TOOK) THE FOLLOWING EMERGENCY ACTIONS: 1. TURN OFF GROUNDWATER REMEDIATION PROJECT TO REDUCE G.P.M. AT OUTFALL. THIS ACTION TO REDUCE FURTHER PRODUCT FROM BEING FLUSHED OUT OF STORM SEWER SYSTEM AND SO THAT A CARBON FILTER DAM COULD FUNCTION. 2.

OHIO EPA, EMERGENCY RESPONSE GROUP
DISTRICT OFFICE INVESTIGATION REPORT

SPILL #: 03-76-0816
DATE SUBMITTED: 03/10/92

STATUS: F01
ON SCENE COORDINATOR: BRUCE C. MILLER

REPORTED: 15:00 03/05 DISCOVERED: OCCURRED: 11:00 03/05
REPORTED BY: ANON. PHONE:

-----ENTITY-----

COMPANY: EKCO HOUSEWARES INC.
DIVISION:
P.O. BOX: P.O. BOX 560 359 STATE AVE. EX., NW
CITY, STATE: MASSILLON, OH
ZIP CODE: 44648 COMPANY PHONE: 216 832 5026
SPCC PLAN REQUIRED: N SPCC PLAN IN EFFECT: N

REP. CONTACTED: THOMAS SHINGLETON
PHONE: 216 832 5026

TITLE: PLANT MANAGER

EXT:

----- SPILL LOCATION -----

COUNTY: STARK
CITY: MASSILLON
TOWNSHIP:
STREET LOCATION: THIRD STREET BRIDGE OVER NEWMAN CREEK

LATITUDE: LONGITUDE:

-----PRODUCT(S) INFORMATION-----

PRODUCT /	AMOUNT SPILLED /	AMOUNT RECOVERED
1,1,1 TRICHLOROETHANE	5 GAL (?)	0

CAUSE: PREVIOUS SPILL (9202-76-0576)
SOURCE: TEMPORARY CARBON DAM REMOVAL
WATERWAY: NEWMAN CREEK
WATERSTAGE: N LENGTH OF WATERWAY: 0.1
LAND AREA:
PRE-RESPONSE ACTION:

----- REFERRAL(S) -----

NAME: / AGENCY: / DATE:

----- EXPENSES -----

SUPPLIES: 2/ 40ML VOC VIALS
PHOTOS:
FIELD TESTS:
LAB SAMPLES: 1 - KEMRON

----- COMMENTS -----

03/05/92 CITIZEN REPORTED THAT COMPANY WAS OUT BY CREEK IN YELLOW SUITS DUMPING DRUMS OF CHEMICALS INTO THE WATER. IN REALITY, SAMSEL SERVICES WAS REMOVING A TEMPORARY CARBON FILTER DAM IN NEWMAN CREEK WHICH WAS INSTALLED TO TREAT A TCE SPILL FROM 02/18/92 (02-76-0576). A MINOR FISH KILL OCCURRED WHEN THE DAM WAS REMOVED. PROBABLY A RESULT OF A SLUG OF TCE NOT ABSORBED BY THE CARBON BEING DISCHARGED DOWN THE STREAM WHEN THE DAM WAS REMOVED. THE KILL WAS LIMITED TO A 50 FOOT LENGTH OF STREAM UNDER THE THIRD STREET BRIDGE. MOSTLY CRAYFISH WERE KILLED... SOME MINNOWS, AND TWO LARGER FISH. NOTIFIED DIV. OF WILDLIFE BY PHONE ON 03/05. SAMPLED EKCO'S OUTFALL INTO NEWMAN CREEK TO DETERMINE IF THERE WAS HIGH TCE LEVELS.



State of Ohio Environmental Protection Agency

Northeast District Office

200 E. Aurora Road
Troy, Ohio 44087-1969
(216) 963-1200 (216) 425-9171
FAX (216) 487-0769

George V. Voinovich
Governor

CONF
LDF
HSEP
FILE
TCLP
SA

March 20, 1991

RE: EKCO HOUSEWARES, INC.
STARK COUNTY
OHD 045 205 424
NOTICE OF VIOLATION

CERTIFIED MAIL

Mr. Thomas Shingleton
Ekco Housewares, Inc.
359 State Ave., N.W.
P.O. Box 560
Massillon, Ohio 44658

RECEIVED
OHIO EPA

MAR 21 1991

DIV. of SOLID & HAZ. WASTE MGT.

Dear Mr. Shingleton:

On March 14, 1991, Janet Boyer, Kris Switzer and I conducted a hazardous waste compliance inspection at Ekco Housewares, Inc. Jeff Richardson represented the facility during the inspection. The following violations were noted during the inspection:

1. Manifest #00029 did not have a transporter signature on the second page of the original and the D007 and D009 waste codes that were crossed out were not initialled as required by OAC 3745-52-23(A)(2).
2. The facility has not maintained a written job description for each position at the facility related to hazardous waste management as required by OAC 3745-65-16(D)(2). The facility did not have any information available on site at the time of the inspection; however, job descriptions were submitted on July 6, 1990 to the Ohio EPA in response to the previous inspection on June 27, 1990. Please keep this filed and updated.
3. The facility failed to mark the five (5) gallon buckets at the paint booths with the words "Hazardous Waste" or other words that identify the contents of the container. This is in violation of OAC 3745-52-34(C)(1)(b).
4. The facility failed to keep the containers holding hazardous waste at the paint booths (both the 5 gallon buckets and the 55 gallon drums) closed except when necessary to add waste as required by OAC 3745-66-73(A).
5. The facility needs to keep a log of their testing of fire and spill control equipment as required by OAC 3745-66-33(B).



Mr. Thomas Shingleton
March 20, 1991
Page -2-

6. The facility needs to revise their at least weekly inspection log of the hazardous waste storage areas to include the time of the inspection, notation of observations, and date and nature of any repairs or remedial actions to be in full compliance with OAC 3745-66-74(B).
7. The facility has failed to provide notification to receiving treatment and storage facilities that waste shipments exceeded the applicable land disposal restriction treatment standards on manifests #00026 and #00030 to Ross Incinerator as required by OAC 3745-59-07(A)(1) and 40 CFR 268.7(a)(1).
8. The facility has failed to maintain copies of all land disposal restriction notifications for a period of 5 years as required by OAC 3745-59-07(A)(6) and 40 CFR 268.7(a)(6).

This inspection did not include a review of the groundwater monitoring or financial assurance requirements under RCRA.

Failure to list specific deficiencies in this communication does not relieve you from the responsibilities of complying with all applicable regulations.

Please document to my attention, corrections to the above referenced violations by April 30, 1991. I have enclosed copies of my inspection check sheets for your use. If you should have any questions regarding this matter, please feel free to contact me at (216) 425-9171.

Sincerely,

Karen L. Nesbit

Karen L. Nesbit
Environmental Scientist
Division of Solid and Hazardous Waste
Management

KLN/fn

enclosures

cc: Harry Courtright, DSHWM, NEDO
Laurie Stevenson, DSHWM, CO

Northeast District Office

2110 E. Aurora Road
Twinsburg, Ohio 44087-1969
(216) 425-9171
FAX (216) 487-0769

Richard F. Celeste
Governor

January 8, 1991

U.S. EPA REGION V
Waste Management Division
OFFICE OF RCRA

RE: EKCO HOUSEWARES
STARK COUNTY
OHD 045 205 424
RCRA

Mr. Thomas Shingleton
Ekco Houseware, Inc.
359 State Ave., N.W.
P.O. Box 560
Massillon, Ohio 44658

RECEIVED
JAN 28 1991

RECEIVED
OHIO EPA

JAN 10 1991

Dear Mr. Shingleton:

DIV of SOLID & HAZ. WASTE MGT.

Thank you for your letter dated July 6, 1990.

Based on the documentation provided in your letter, it appears your facility has returned to compliance with the applicable Ohio Hazardous Waste Regulations as cited in Janet Boyer's June 27, 1990 notice of violation. Specifically these violations were:

- 1) Labeling - OAC 3745-52-34;
- 2) Aisle Space - OAC 3745-65-35;
- 3) Personnel Training - OAC 3745-65-16;
- 4) Access to Communication of Alarm System - OAC 3745-65-34;
- 5) General Inspection Requirements - OAC 3745-65-15.

Please note that a detailed review of the groundwater monitoring, closure plan and financial assurance requirements was not a part of this inspection. These may be handled in separate reviews. Also, be advised that past instances of non-compliance can continue as subjects of pending or future enforcement actions since they constitute violations of the Ohio Revised Code Chapter 3734.

I would like to thank you for your cooperation. If you should have any questions regarding this matter, please contact me at (216) 425-9171.

Sincerely,

Karen Nesbit

Karen Nesbit
Environmental Specialist
Division of Solid and Hazardous Waste
Management

KN/fn

cc: Harry Courtright, DSHWM, NEDO
Laurie Stevenson, DSHWM, CO

SEP 10 1990

5HR-12

Mr. Thomas J. Shingleton
EKCO Housewares, Inc.
359 State Avenue, N.W.
P.O. Box 560
Massillon, Ohio 44658

Re: Land Disposal Restrictions
Inspection
EKCO Housewares, Inc.
OHD 045 205 424

Dear Mr. Shingleton:

On June 5, 1990, the Ohio Environmental Protection Agency (OEPA) representing the United States Environmental Protection Agency (U.S. EPA) conducted an inspection under the Resource Conservation and Recovery Act (RCRA) at the referenced facility. The purpose of the inspection was to determine the compliance status of the facility with respect to the applicable hazardous waste management requirements of RCRA, including the land disposal restrictions.

With respect to the land disposal restriction section of the RCRA inspection, the facility was found to be in compliance with applicable rules and regulations.

If you have any questions regarding this matter, please contact Sally Averill at (312) 886-4439.

Sincerely yours,

ORIGINAL SIGNED BY

RD

Kevin M. Pierard, Chief
Ohio/Minnesota Technical Enforcement Section

cc: Michael Savage, OEPA-CO
Janet Boyer, OEPA-NEDO

bcc: Lisa Pierard, RPB-OH
Francene Harris, REB

5HR-12:FHARRIS/SAVERILL:6-4439:8/30/90 EKCO.NOC

RCRA ENFORCE- MENT	REB STAFF INITIALS 9/10/90	REB SECTION CHIEF JP	REB CHIEF
INIT. DATE	9-10-90		



State of Ohio Environmental Protection Agency

Northeast District Office

2110 E. Aurora Road
Columbus, Ohio 44087-1969
(614) 425-9171
FAX (216) 487-0769

Richard F. Celeste
Governor

June 27, 1990

RE: EKCO HOUSEWARES, INC.
STARK COUNTY
OHD 045-205-424

Mr. Thomas J. Shingleton
EKCO Housewares, Inc.
359 State Ave., N.W.
P. O. Box 560
Massillon, Ohio 44658

RECEIVED
OHIO EPA

JUL 18 1990

DIV. of SOLID & HAZ. WASTE MGT.

Dear Mr. Shingleton:

An inspection was conducted at Ekco Housewares Massillon facility in the presence of Mr. Tom Marcovechio on June 5, 1990. The purpose of this inspection was to assess compliance with state and federal hazardous waste regulations. The following violations were noted at the time of inspection:

1. Labeling OAC 3745-52-34 and 40 CFR 262.34

The date upon which each period of accumulation begins must be marked and visible for inspection on each drum. While being accumulated on-site, each drum must be labeled or marked clearly with the words "Hazardous Waste". This includes drums of still bottoms prior to reclamation.

At the time of inspection, more than 20 drums were being accumulated without labels. Some other drums had labels, but did not have accumulation dates.

All drums should be marked "Hazardous Waste" and dated immediately.

2. Aisle Space - OAC 3745-65-35 and 40 CFR 265.35

Aisle space must be maintained to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, etc. Also, drums should be stacked so that labels are visible for inspection.

Mr. Thomas J. Shingleton
June 27, 1990
Page -2-

3. Personnel Training - OAC 3745-65-16 and 40 CFR 265.16

Facility personnel must complete training that teaches them to perform their duties in a way that ensures the facility's compliance with hazardous waste regulations. The personnel must take part in an annual review of the initial training.

Please provide the following records for the employee signing the facility's manifests:

- a) job title
- b) written job description
- c) training records

Also, provide documentation of annual refresher training for facility personnel.

4. Access to Communication or Alarm System OAC 3745-65-34 and 40 CFR 265.34

Whenever hazardous waste is being handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device.

Personnel in outside storage area do not have immediate access to a communication device. A phone or alarm should be installed in the area.

5. General Inspection Requirements - OAC 3745-65-15 and 40 CFR 265.15

Inspection records were not provided at the time of inspection. Please provide documentation of inspections and a written inspection plan.

This inspection did not include a review of the groundwater monitoring or financial assurance requirements under RCRA. The results of the land disposal restriction portion of this inspection are being forwarded to U.S. EPA for their review.

Please be advised that failure to comply with applicable hazardous waste rules may be cause for enforcement action by this Agency pursuant to Chapter 3745 of the Ohio Revised Code.

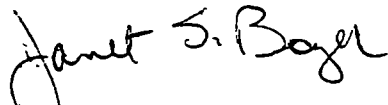
Mr. Thomas J. Shingleton
June 27, 1990
Page -3-

Please respond, in writing, to this Notice of Violation (NOV) within ten (10) days. Your response must include all actions and timetables necessary to achieve compliance.

Failure to list specific deficiencies in this communication does not relieve you from the responsibility of complying with all applicable regulations.

A copy of the completed inspection form is enclosed for your review. Should you have any questions or comments, please advise.

Sincerely,



Janet S. Boyer
Environmental Engineer
Division of Solid and Hazardous Waste
Management

JSB/sp

Enclosures

cc: Michael Eggert, DGW, Central Office
Carolyn Reiersen, DSHWM, Central Office
Debby Berg, DSHWM, NEDO

7109221522

MAY 24 1990

5HR-12

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Thomas J. Shingleton
EKCO Housewares, Incorporated
359 State Avenue, N.W.
Massillon, Ohio 44648

Re: EKCO Housewares, Inc.
OHD 045 205 424

Dear Mr. Shingleton:

On February 23, 1989, the Ohio Environmental Protection Agency (OEPA) representing the United States Environmental Protection Agency (U.S. EPA) conducted an inspection under the Resource Conservation and Recovery Act (RCRA) at the referenced facility. The purpose of the inspection was to determine the compliance status of the Massillon, Ohio, facility with respect to the applicable hazardous waste management requirements of RCRA, including the land disposal restrictions.

With respect to the land disposal restriction section of the RCRA inspection, the Massillon, Ohio, facility was found to be in compliance with applicable rules and regulations.

If you have any questions regarding this correspondence, please contact Sally Averill at (312) 886-4439.

Sincerely yours,

Kevin M. Pierard, Chief
Ohio/Minnesota Technical Enforcement Section

cc: Susan Mc Causlin, SEDO

5HR-12:SAVERILL:sbowie:6-4439:disk#2:ekco.nov

INIT. DATE	TYP.	AUTH.	IL/IN TECH. ENF. SEC.	MI/WI TECH. ENF. SEC.	OH/MN TECH. ENF. SEC.	IL/MI/WI ENF. PROG. SECTION	IN/MN/OH ENF. PROG. SECTION	RCRA ENF. BR. CHIEF	O. R. A.D.D.	WMD DIR
	5/24/90	SA 5/22			SA 5/24					



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.

CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF:
5HR-13

AUG 2 1989

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Steve Oster
Wilke Fair and Gallagher
Three Lafayette Centre
1155 21st Street NW
Washington, D.C. 20036-3302

Dear Mr. Oster:

This letter is to acknowledge receipt of the Part
Final Order - Penalty. A fully executed copy of
Final Order is enclosed for your file.

Your cooperation in resolving this matter is appreciated.

Sincerely yours,

David A. Ullrich

David A. Ullrich
Associate Director, Office of RCRA
Waste Management Division

Enclosure

Sally Averill (5HR-13) RCRA ENF. BRANCH

Averill

7. Date of Delivery 8/4/89

PS Form 3811, Mar. 1988 * U.S.G.P.O. 1988-212-965

DOMESTIC RETURN RECEIPT

Form 3800, June 1985

Put this in the box for 1-11

3. Mr. Steve Oster

4. Wilke Fair & Gallagher

5. Three Lafayette Centre

6. 1155 21st Street NW

7. Washington, D.C. 20036-3302

Postage \$ 45

Certified Fee \$ 85

Special Delivery Fee

Restricted Delivery Fee

Return Receipt showing to whom and Date Delivered \$ 90

Return Receipt showing to whom, Date, and Address for Delivery

TOTAL Postage and Fees \$ 220

Postmark of Post Office

Put this in the box for 1-11

8. Items sent this way must be registered

759.234.395

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dear Mr. Oster:

Your cooperation in resolving this matter is appreciated.

ORIGINAL SIGNED BY
DAVID A. ULLRICH

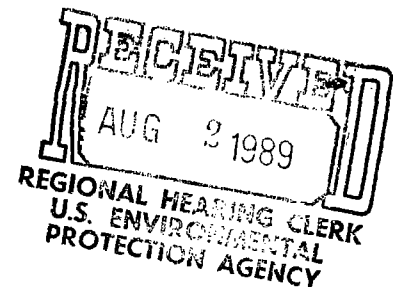
ORC	ASST. REGIONAL COUNSEL	S.W.E.R. SECTION CHIEF	S.W.E.R. BR. CHIEF	REGIONAL COUNSEL
INIT. DATE				

5HR-12:SAVERILL:sbowie:6-4439:disk #2:oster7/21/89

bcc: Regional Hearing Clerk ✓
Totomayer SMF ✓
5C - Pruitt ✓

S. Averill
Sec - ORV
B. Small - HQ
ap
7/28/89

TY: <i>SA</i> <i>7/20</i> INIT. DATE	IL/IN TECH. ENF. SEC.	MI/WI TECH. ENF. SEC.	OH/MN TECH. ENF. SEC.	IL/MI/WI ENF. PROG. SECTION	IN/IAH/OH ENF. PROG. SECTION	RCRA ENF. BR. CHIEF <i>WEM</i> <i>7/20/89</i>	O.R. : <i>WAL</i> A.D.D. : <i>DM</i> <i>DM</i> <i>7/20/89</i>
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:

EKCO HOUSEWARES, INC.

P.O. BOX 560

MASSILLON, OHIO 44646

EPA I.D. NO. OHD 045-205-424

DOCKET NO. V-W-R-87-008

PARTIAL CONSENT AGREEMENT
AND FINAL ORDER - PENALTY

On November 6, 1986, a Complaint was filed in this matter pursuant to Section 3008 of the Resource Conservation and Recovery Act as amended (RCRA), 42 U.S.C. Section 6928, and the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22. The Complainant is the Director of the Waste Management Division, Region V, United States Environmental Protection Agency (U.S. EPA). The Respondent is Ekco Housewares, Inc.

WHEREFORE, in settlement of the allegations set forth in the Complaint the parties enter into the following stipulations:

1. Respondent has been served with a copy of the Complaint, Findings of Violation and Compliance Order (Docket No. V-W-R-87-008) in this matter.

2. For purposes of entering into this Order only, the Regional Administrator has jurisdiction over this matter pursuant to Section 3008 of RCRA, 42 U.S.C. Section 6928.
3. Respondent owns and operates a facility located at 359 State Avenue Extension, N.W., Massillon, Ohio 44646.
4. Respondent neither admits nor denies the specific factual allegations contained in the Complaint, other than the admissions made in its Answer.
5. Respondent explicitly waives its right to request a hearing regarding the allegations contained in the Complaint.
6. This Order shall become effective on the date it is filed with the Regional Hearing Clerk.
7. Respondent consents to the issuance of the Order hereinafter set forth, and hereby consents to the payment of a civil penalty in the amount hereinafter stipulated.
8. This Partial Consent Agreement and Final Order - Penalty, addresses only the section of the Complaint entitled "Proposed Civil Penalty" found on page 11 of the Complaint. Another Partial Consent Agreement and Final Order which

addresses paragraphs A-C of the Complaint herein was signed by the Regional Administrator on November 4, 1987. The two Partial Consent Agreements and Final Orders together resolve all of the issues alleged in the Complaint herein.

ORDER

Based on the foregoing stipulations, the Parties agree to the entry of the following Order in this matter:

A. In satisfaction of the allegations set forth in the Complaint and not previously addressed in the Partial Consent Agreement and Final Order signed by the Regional Administrator on November 4, 1987, Respondent shall pay a civil penalty in the amount of FIFTY-FIVE THOUSAND FOUR HUNDRED SEVENTY-EIGHT DOLLARS AND 50 CENTS (\$55,478.50), payable to the Treasurer of the United States of America within thirty (30) days of the effective date of this Order. Said payment shall be mailed to U.S. EPA, Region V, P.O. Box 70753, Chicago, Illinois 60673. Copies of the transmittal of the payment should also be sent to both the Regional Hearing Clerk, Planning and Management Division, U.S. EPA, 230 South Dearborn Street, Chicago, Illinois 60604, and the Solid Waste and Emergency Response Branch Secretary, Office of Regional Counsel at the same address.

B. The U.S. EPA may collect interest on any amounts overdue under the terms of this Order at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. Section 3717. A late payment handling fee of \$20.00 will be imposed on any late payment. In addition, a six percent per annum penalty will be applied to any principal amount not paid within ninety (90) days of the date on which such payment is due.

C. This Order, and the Partial Consent Agreement and Final Order signed by the Regional Administrator on November 4, 1987, together satisfy all of the allegations set forth in the Complaint. Upon payment by Respondent of the stipulated civil penalty set forth above, and upon satisfactory completion of all Respondent's obligations as outlined in this Order and the Order signed by the Regional Administrator on November 4, 1987, U.S. EPA discharges and covenants not to sue Respondent from and for the matters set forth in the Complaint.

D. By signing this Order, U.S. EPA acknowledges that Respondent does not acknowledge any liability or fault with respect to conditions at or around the subject facility. This Order shall not be admissible in any proceeding other than an action to enforce this Order.

Notwithstanding any other provision of this Order, an enforcement action may be brought pursuant to Section 7003 of

RCRA or other statutory authority should the U.S. EPA determine that the handling, storage, treatment, transportation, or disposal of solid or hazardous waste at the facility may present an imminent and substantial endangerment to human health or the environment. Respondent reserves the right to contest any finding, determination, or allegation that the handling, storage, treatment, transportation, or disposal of solid or hazardous waste at the facility may present an imminent and substantial endangerment to human health or the environment.

The above Partial Consent Agreement and Final Order - Penalty consisting of 6 pages is hereby consented to by both of the parties to this proceeding.

Agreed this 7th day of July, 1989
Ekco Housewares, Inc., Respondent

By Jeffrey A. Wiest
Title Secretary

Agreed this 1st day of August, 1989

Basil G. Constantelos
Basil G. Constantelos, Director
Waste Management Division
U.S. Environmental Protection Agency
Region V Complainant

The above being agreed and consented to, it is so ORDERED
this 1st day of August, 1989

Valdas V. Adamkus
Valdas V. Adamkus
Regional Administrator
U.S. Environmental Protection Agency
Region V

IN THE MATTER OF:

EKCO HOUSEWARES, INC.
P.O. BOX 560
MASSILLON, OHIO 44646

Docket No.: V-W-R-87-008

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V**

DATE:

AUG 01 1989

SUBJECT: Partial Consent Agreement and Final Order - Penalty

FROM: Basil G. Constantelos, Director
Waste Management Division

TO: Valdas V. Adamkus
Regional Administrator

Attached for your review and signature is a Partial Consent Agreement and Final Order (CAFO) for EKCO Housewares, Incorporated. This CAFO addresses only the penalty portion of the Order. The technical deficiencies in the Order were addressed in an Administrative Order on Consent pursuant to the Authority Section 3008(h) that was signed on April 13, 1989.

The reduction in the penalty amount from seventy-nine thousand two hundred and fifty five dollars (\$79,255.00) to fifty-five thousand four hundred seventy eight dollars and fifty cents (\$55,478.50) was approved based on the signing of the 3008(h) Order.

We recommend that you sign this Partial Consent Agreement and Final Order on behalf of Region V.

Attachment

5HR-12:SAVERILL:sbowie:7/20/89:disk #1 EKCO2.mem:6-4439

INIT. DATE	TYP.	AUTH.	RCRA ENF. BR. CHIEF	O. R. A.D.D.	WMD DIR
	5/1/89	SA 7/20	WEN 7/24/89	DAY 7/31/89	5/1/89

AP 7/28/89 CU 7/31/89

JUL 05 1989

5HR-12

Mr. Thomas Shingleton
EKCO Housewares, Inc.
P.O. Box 560
Massillon, Ohio 44648-0560

Re: Consent Order
EKCO Housewares, Inc.
V-W-87-R-08

Dear Mr. Shingleton:

Please note that the United States Environmental Protection Agency (U.S. EPA) Project Coordinator identified in Section XV of the referenced Consent Order is Ms. Sally Averill. Please send all correspondence concerning this Consent Order to her attention.

If you should have any questions, please contact her at (312) 886-4439.

Sincerely yours,

Kevin M. Pierard, Chief
Ohio/Minnesota Technical Enforcement Section
RCRA Enforcement Branch

cc: Timothy McGuinness
American Home Products Corp.
685 Third Ave.
New York, New York 10017

5HR-12:SAVERILL:sbowie:6/29/89:6-4439:disk #1:ekcochange

INIT. DATE	TYP.	AUTH	IL/IN TECH. ENF. SEC.	MI/WI TECH. ENF. SEC.	OH/MN TECH. ENF. SEC.	IL/MI/WI ENF. PROG. SECTION	IN/MN/OH ENF. PROG. SECTION	RCRA ENF. BR. CHIEF	O.R. A.D.D.	WAL. Dir.
5/13/89		SA			KP 7-3-89			P.E.M. 7-3-89		

for w.m.

RCRA CONSENT AGREEMENT AND FINAL ORDER SIGN-OFF

PART I BACKGROUND

Facility Name EXCO Housewares, Inc.
 Facility RCRA ID Number ~~1000~~ OHO-045 205 424
 Docket Number V-W-R-87-008
 RER Assignee Sally Averill ORC Assignee Susan Prout
 Summary of Agreement Penalty only, partial CAFO. The original amount was for \$79,255.

PART II CONCURRENCES ON DRAFT CAFO

	Initials	Date	Agree	Disagree
RER Assignee	<u>SA</u>	<u>3/13/89</u>	<u> </u>	<u> </u>
Chief, RCRA Enf. Section	<u>WEM</u>	<u>3-16-89</u>	<u> </u>	<u> </u>
Chief, RCRA Enf. Branch	<u>WEM</u>	<u>3/15/89</u>	<u>✓</u>	<u> </u>
Asst. Regional Counsel	<u>SWP</u>	<u>3/13</u>	<u>✓</u>	<u> </u>
Chief, S.W.E.R. Section	<u>JSE</u>	<u>3/13</u>	<u>✓</u>	<u> </u>

PART III RETURN TO ORC ASSIGNEE FOR TRANSMITTAL OF DRAFT TO THE FACILITY

PART IV FINAL CAFO APPROVAL

RER Assignee	<u>SA</u>	<u>7/20</u>	<u>✓</u>	<u> </u>
Chief, RCRA Enf. Section	<u>JSE KP</u>	<u>7/20</u>	<u>✓</u>	<u> </u>
Chief, RCRA Enf. Branch	<u>WEM</u>	<u>7/20/89</u>	<u>✓</u>	<u> </u>
Assoc. Dir., Office of RCRA	<u>DM</u>	<u>7/31/89</u>	<u>✓</u>	<u> </u>
Asst. Regional Counsel	<u>SWP</u>	<u>7/14</u>	<u>✓</u>	<u> </u>
Chief, S.W.E.R. Section	<u>AT</u>	<u>7/18</u>	<u>✓</u>	<u> </u>
Director, WMD	<u>[Signature]</u>	<u>7/18/89</u>	<u>✓</u>	<u> </u>
Regional Administrator	<u> </u>	<u> </u>	<u> </u>	<u> </u>

PART V RETURN TO J. SHARP, 5HR-13, FOR MAILING



State of Ohio Environmental Protection Agency

Northeast District Office

10 E. Aurora Road
Twinsburg, Ohio 44087-1969
(216) 425-9171

TO:

① Sally Swanson
② Sally Merrill

CMPL, IS, CO, ISS

LDF



Richard F. Celeste
Governor

March 1, 1989

RE: EKCO HOUSEWARES, INC.
STARK COUNTY
OHD 045-205-424

Mr. Thomas J. Shingleton
EKCO Housewares, Inc.
359 State Ave., N.W.
P. O. Box 560
Massillon, Ohio 44648

Dear Mr. Shingleton:

On February 23, 1989, I met with Tom Marcovechio to conduct an inspection of the EKCO Housewares Massillon facility. The purpose of this inspection was to determine the facility's compliance with state and federal hazardous waste regulations. A copy of the inspection report is enclosed for your review. No violations were noted during the inspection.

Please note that EKCO's compliance with groundwater and financial requirements was not reviewed as part of this inspection. A Land Disposal Restriction evaluation was conducted. A copy of the LDR inspection checklist will be forwarded to U.S. EPA, Region V for their review.

Sincerely,

Susan E. McCauslin

Susan E. McCauslin
Environmental Scientist
Division of Solid and Hazardous Waste
Management

SEM/sp

Enclosure

cc: Dave Sholtis, DSHWM, Central Office
Michael Eggert, DGW, Central Office

11-30-87

EKCO MEETING

SIGN IN SHEET

Walter F. Thiel	U.S. EPA	(312) 886-0992
Susan W. Prout	U.S. EPA	(312) 353-1029
Kenneth J. Petrone	EKCO	(312) 678-8600 X343
Timothy McGuinness	"	212-878-5769
Joan Licht Mantel	"	212-878-6169
Steven A. Tasher	Donovan Leisure	202 862 4723

MEETING ROSTER

PLACE COLUMBUS, OH.

[illegible]

SETTLEMENT CONFERENCE

NAME EXCO

DATE 8-15-88

SUBJECT Q.A.P.

SUMMARY OF CONFERENCE ① An. Results

MEETING ROSTER

[illegible]

SETTLEMENT CONFERENCE

NAME EKCO HOUSEWARES

DATE 3-11-88

SUBJECT ① INT. MEASURES PLAN ② RFI/CMS S.O.W. ③ G.W.Q.A.P. COMMENTS

SUMMARY OF CONFERENCE

MEETING ROSTER

[illegible]

SETTLEMENT CONFERENCE

NAME _____

DATE _____

SUBJECT _____

SUMMARY OF CONFERENCE

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

MEETING ROSTER

PLACE *ORC CHICAGO*

[illegible]

SETTLEMENT CONFERENCE

NAME _____

DATE _____

SUBJECT _____

SUMMARY OF CONFERENCE

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Law Offices of
Donovan Leisure Newton & Irvine
1850 K Street, N.W.
Washington, D. C. 20006

30 ROCKEFELLER PLAZA
NEW YORK, N. Y. 10112
TELEPHONE: 212 307-4100
TELEX: 127429
TELECOPIER: 212-307-4836

333 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071
TELEPHONE: 213 253-4000
TELEX: 194418
TELECOPIER: 213-617-2368

TELEPHONE: 202 862-4700
TELEX: 6974539-DONLARD
CABLE ADDRESS: DONLARD, D. C.
TELECOPIER: 202-785-1058

130 RUE DU FAUBOURG SAINT-HONORE
75008 PARIS
TELEPHONE: 1-42-25-47-10
TELEX: 290907
TELECOPIER: 1-42-56-08-06

WRITER'S DIRECT DIAL NUMBER
202 862-

4735

January 5, 1987

FEDERAL EXPRESS

Victor Franklin, Esq.
United States Environmental
Protection Agency
230 South Dearborn Street
Chicago, Illinois 60604

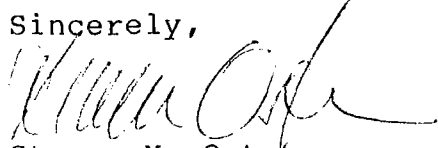
Re: EKCO Housewares, Inc.
EPA I.D. No. OHD 045 205 424

Dear Victor:

This is to confirm our meeting regarding the above-referenced matter to be held on January 8, 1987, at 1:00 p.m. at EPA. We expect the following persons to attend: Tom Shingleton, Ken Petrine, Steven A. Tasher, Joan Mantel, and myself.

In addition, I would appreciate your response to my request to review EPA's and OEPA's enforcement files in this matter. Should you have any questions, please call me at your convenience.

Sincerely,


Steven M. Oster

ALPHA
PRETEST
NOT. 818-80
as GENERATOR

1-7-87 VICTOR

BILL MINNIS CONK
RM
copy of PART 12 N.E.
A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF:

5HE-12

NOV 9, 1987

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Thomas Shingleton, Plant Manager
Ekco Housewares, Inc.
P.O. Box 560
Massillon, Ohio 44648-0560

Dear Mr. Shingleton:

This letter is to acknowledge receipt of the Partial Consent Agreement and Order regarding Ekco Housewares, Inc., Docket No. V-W-87-R-008. A fully executed copy of the Consent Agreement and Final Order is enclosed for your files.

Your cooperation in resolving this matter is appreciated.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "William H. Miner", is written over the typed name.

William H. Miner, Acting Chief
Solid Waste Branch

Enclosure

cc: Prentice-Hall Corporation System, Inc.
Registered Agent for Ekco Housewares, Inc.

NOV 9 1987

SHE-12

THE UNIVERSITY OF CHICAGO

Thomas W. Kingston, Plant Manager,
The Deere Company, Inc.,
P.O. Box 100
Moline, Iowa 52950-0100

This letter is to acknowledge receipt of the Partial Current Agreement and Order regarding this Agreement, Inc., Docket No. T-8-51-2-198. A fully executed copy of the Current Agreement and this letter is enclosed for your files.

Your cooperation in resolving this matter is appreciated.

Sincerely yours,

William A. Miner, Acting Chief
Sales Waste Branch

Figure 1

QC: Frontier-Poll Corporation, Tucson, Inc.
Registered Agent for State of Arizona, Inc.

bcc: D. Knapp, HUSB ✓
B. Smith, MN-27 ✓
B. Shorly, MF-16 ✓
A. Alanzo, ORCA ✓
W. Niles, HUSB ✓
ORCA, ANERA, Secretary

5. 结论

	FIRST	MIDDLE	OTHER LAST	BIRTH DATE	SECT COUNT	JURY DAYS	UNITED FRONT	ARMY
IND. DATE	10-2-17	10-2-17		1903	10-2-17			

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:)	DOCKET NO. V-W-R-87-008
)	
EKCO HOUSEWARES, INC.)	PARTIAL CONSENT AGREEMENT AND
P.O. BOX 560)	ORDER
MASSILLON, OHIO 44646)	
EPA I.D. NO. OHD 045-205-424)	
)	

PREAMBLE

On November 6, 1986, a Complaint was filed in this matter pursuant to Section 3008 of the Resource Conservation and Recovery Act as amended (RCRA), 42 U.S.C. §6928, and the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR Part 22. The Complainant is the Director of the Waste Management Division, Region V, United States Environmental Protection Agency (U.S. EPA). The Respondent is Ekco Housewares, Inc.

STIPULATIONS

The parties, desiring to settle this action, enter into the following stipulations:

1. Respondent has been served a copy of the Complaint, Finding of Violation and Compliance Order (Docket No. V-W-R-87-008) in this matter.

2. Respondent is a Delaware corporation whose registered agent is Prentice-Hall Corporation System, Inc. Respondent owns and operates a facility located at 359 State Avenue Extension, N.W., Massillon, Ohio 44646.

3. For the purposes of this agreement, Respondent admits the jurisdictional allegations contained in the Complaint.

4. Respondent neither admits nor denies the specific factual allegations contained in the Complaint, other than admissions made in its Answer.

5. Respondent consents to the issuance of the Order herein after set forth.

6. This Order shall become effective on the date it is filed with the Regional Hearing Clerk.

7. This Partial Consent Agreement and Order (PCAO) addresses only paragraphs A-C of the Complaint herein and does not address the amount of the penalty assessed therein.

8. This Order explicitly reserves the right of U.S. EPA to seek the full penalty assessed in the Complaint as a result of Respondent's alleged RCRA violations, as well as the right of the Respondent to contest the amount of any penalty sought to be assessed for alleged RCRA violations.

ORDER

Based on the foregoing stipulations, the parties agree to the entry of this PCAO.

A. Respondent shall immediately, upon this Order becoming effective, cease all treatment, storage or disposal of any hazardous waste except such treatment, storage or disposal as shall be in compliance with the Standards for Hazardous Waste Treatment, Storage, and Disposal Facilities, except as provided for in Paragraph B below.

B. The Respondent shall, within the time periods set forth herein, achieve compliance with the requirements in the numbered paragraphs below:

1. Submit to the U.S. EPA within ninety (90) days of the effective date of this Order, a closure plan for the surface impoundment located at Respondent's Massillon, Ohio facility prepared in accordance with the standards for such plans contained in 40 CFR 265.111 through 265.120 and 40 CFR 265.228. The closure plan shall include but not be limited to a sampling and analysis plan to determine the extent of hazardous waste and constituents in the surface impoundment and in the underlying and surrounding soils and groundwater. The plan shall also provide for the treatment and/or removal and proper disposal of all hazardous waste in the surface impoundment including all contaminated soils and/or groundwater. The U.S. EPA will review this closure plan and either approve, disapprove or modify the plan.

2. Upon approval and/or modification of the closure plan by the U.S. EPA, the Respondent shall immediately initiate and complete the activities in the plan in accordance with the schedule contained therein and any modification made by U.S. EPA.

3. Develop and submit a plan for a groundwater quality assessment program pursuant to 40 CFR 265.93 within fifty six (56) days of the effective date of this Order.

EKCO
PCAO



The U.S. EPA will review this groundwater quality assessment monitoring plan and either approve, disapprove or modify the plan.

4. Upon approval and/or modification of the groundwater quality assessment plan by U.S. EPA, the Respondent shall immediately initiate and complete the activities in the plan in accordance with the schedule contained therein and any modification made by U.S. EPA and shall fully comply with the provisions of Subpart F of 40 CFR Part 265.

5. Comply with the financial responsibility requirements for closure until closure has been certified, pursuant to 40 CFR 265.140 through 265.151, at the time of submission of the closure plan for the surface impoundment pursuant to Paragraph B (1).

6. Within thirty (30) days of the receipt of U.S. EPA's notification of disapproval of either plan, unless otherwise extended by mutual agreement of the parties, Respondent shall amend and submit to U.S. EPA for approval, a revised plan. U.S. EPA's disapproval of the subsequent revision of either plan submitted by Respondent shall be deemed a violation of this PCAO.

7. Respondent agrees to enter into good faith negotiations with U.S. EPA regarding a RCRA Facility Investigation (RFI) and Corrective Measures Study (CMS) pursuant to Section 3008(h) of RCRA 42 U.S.C. §6928(h) for its Massillon, Ohio facility.

Failure to comply with any requirement of this PCAO may subject Respondent to liability for the statutory penalty as stated in RCRA Section 3008(c) for each day of continued non-compliance with the terms of this Partial Consent Agreement and Final Order. U.S. EPA is authorized to assess such penalties pursuant to RCRA Section 3008(c). \$25K/DAY

This PCAO constitutes a partial settlement and partial disposition of the Complaint filed in this case. This PCAO does not address the amount of penalty assessed in the Complaint

and both parties reserve all rights with respect to the assessment of a penalty.

Notwithstanding any other provision of the Order, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. §6973, or other statutory authority should the U.S. EPA determine that the handling of solid waste or hazardous waste at the facility presents an imminent and substantial endangerment to human health or the environment. Respondent reserves the right to contest any allegation, finding, or determination that the handling of solid waste or hazardous waste at the facility presents an imminent and substantial endangerment to human health or the environment.


SIGNATORIES

Each undersigned representative of a signatory to this Partial Consent Agreement and Final Order consisting of 6 pages certifies that he or she is fully authorized to enter into the terms and conditions of this Partial Consent Order and to legally bind each signatory to this document.

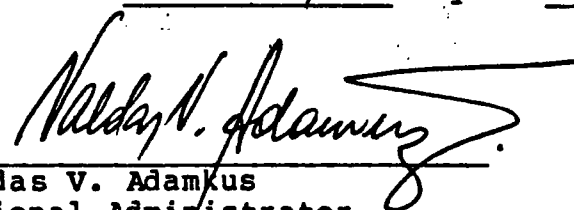
Agreed this 15 day of October, 1987.

By: 
Ekco Housewares, Inc.
Respondent

Agreed this 2nd day of November, 1987.

By: 
Basil G. Constantelos
Waste Management Division
Complainant
U.S. Environmental Protection Agency
Region V

The above being agreed and consented to, it is so ordered this 4th day of November, 1987.

By: 
Valdas V. Adamkus
Regional Administrator
U.S. Environmental Protection Agency
Region V

100

SECRET

THE

[illegible]

THE UNITED STATES DEPARTMENT OF AGRICULTURE
WASHINGTON, D. C. 20250

Please contact either of us if you have any questions relative to this matter.

bufile: Ketter, Anna (SWE-12)

SHE-12: UNTER: tharris: 6-4446: 10/21/87

	TYPIST	AUTHOR	EDITOR	UNIT	NO. OF	REPT.	UNIT	UNIT
1	10/11/1	10/11/1				10/11/1	10/11/1	10/11/1



Ohio Environmental Protection Agency

East District Office
2110 E. Aurora Road
Twinsburg, Ohio 44087-1969
(216) 425-9171

recall w/inc. #

X, N, IS, LDF, ISS

include attached doc
in copy sent to Reg. IV
Richard F. Celeste
Governor

September 8, 1987

RE: ECKO HOUSEWARES, INC.
STARK COUNTY
OHD 015-205-424

ECKO Housewares, Inc.
359 State Ave., N.W.
P. O. Box 560
Massillon, Ohio 44648

Attn: Thomas Shingleton

up as OHD 015 204 924

OHD 045 205 424

Dear M:r. Shingleton:

On August 24, 1987, this writer and Teresa Sabol conducted a hazardous waste inspection of ECKO Housewares, Inc. located at 359 State Ave., N.W., Massillon. You, Jim Epps, Tom Marcovechio and Jeff Richardson represented the facility during the inspection. The facility was inspected for compliance with both Ohio and Federal hazardous waste regulations for facilities that generate, treat, store and dispose of hazardous waste.

During the inspection the following violations were noted:

1. The facility failed to have a Personnel Training Program in compliance with 40 CFR 265.16 and OAC 3745-65-16. The facility failed to document that an adequate annual training refresher course was being given to all personnel in the hazardous waste management program.
2. The facility failed to document and provide all training records including written job titles, job descriptions for all employees involved in the hazardous waste management program as required by 40 CFR 265.16, 262.34 and OAC 3745-65-16, 52-34.
3. The facility failed to have a detailed written waste analysis plan in compliance with 40 CFR 265.13 and OAC 3745-65-13 (applicable to surface impoundment waste unit).
4. The facility failed to demonstrate and document that areas subject to spills (loading and unloading areas, container storage areas, etc.) are inspected on a daily basis when in use as required by 40 CFR 265.15 and OAC 3745-65-15.
5. "No Smoking" or "No Open Flame" signs must be posted in the outside drum storage area where ignitable hazardous waste are stored as required by 40 CFR 265.17, 265.176 and OAC 3745-65-17 and 66-76.

6. The facility must attempt to make arrangements with local emergency service authorities to familiarize them with the possible hazards and facility layout. These arrangements must be documented as required by 40 CFR 265.37 and OAC 3745-65-37.
7. The facility's contingency plan must be revised to reflect the following as required by 40 CFR 265.51 and OAC 3745-65-52.
 - a.) Arrangements or agreements with local or State emergency authorities;
 - b.) A list of all emergency equipment including location, physical description and outline of capabilities;
 - c.) A evacuation plan for facility personnel.
8. Any revisions of the facility's contingency plan must be maintained on-site and submitted to all emergency authorities (police depts. fire depts., hospitals, etc.) that may be required to participate in the execution of the plan as required by 40 CFR 265.53, .54 and OAC 3745-65-53 and 65-54.
9. The facility failed to have a written operating record as required by 40 CFR 265.73 and OAC 3745-65-73 containing the following information:
 - a.) Description and quantity of each hazardous waste treated, store or disposed of within the surface impoundment and the date(s) and method(s) pertinent to such treatment, storage or disposal;
 - b.) Common name, EPA hazardous waste I.D. number and physical state (solid, liquid, gas) of the waste(s);
 - c.) The estimated (or actual) weights, volume, or density of the wastes(s);
 - d.) Description of the method(s) used to treat, store or dispose of waste(s);

- e.) Present physical location of each hazardous waste within the facility;
 - f.) Records of any waste analysis or trial tests required to be performed;
 - g.) Records of closure cost estimates and post-closure cost estimates required by subpart G (Closure and Post-Closure).
10. The facility must submit to OEPA by March 1 of each year, an annual Treatment, Storage and Disposal Operating report containing all operating information as required in 40 CFR 265.75 and OAC 3745-65-75, (Annual Report).
11. The facility must document that containers of ignitable hazardous waste are stored at least 50 feet from the property line and "No Smoking" or "No Open Flame" signs are posted as required by 40 CFR 265.17, 176 and OAC 3745-66-76.
12. The containment system or dike of the surface impoundment must be inspected at least once per week and the inspections must be documented as required by 40 CFR 265.226 and OAC 3745-67-26. The facility must inspect the surface impoundment including dikes and vegetation surrounding the dike, at least once a week to detect any deterioration or failures in the impoundment containment structures. The facility must document the remediation of any deterioration or malfunction as required by 40 CFR 265.15 and OAC 3745-65-15.

During the inspection, the facility's compliance with 40 CFR 265 Subpart G: Closure and Post-Closure; 40 CFR 265 Subpart H: Financial Requirements; and 40 CFR 265 Subpart F: Ground water monitoring could not be adequately and sufficiently determined. Therefore, the facility must provide documentation to justify to the OEPA and U.S. EPA compliance to these subparts.

ECKO Housewares, Inc.
September 8, 1987
Page -4-

Please within 30 days of receipt of this letter document to my attention at the Northeast District Office corrections to the above referenced violations.

Yours truly,

Kris L. Coder

Kris L. Coder
Environmental Scientist
Division of Solid and Hazardous Waste
Management

KLC/sp

Enclosure

cc: ✓ Dave Sholtis, DSHWM, Central Office
Walter Nied, U.S. EPA, Region V

Law Offices of
Donovan Leisure Newton & Irvine
1850 K Street, N.W.
Washington, D. C. 20006

30 ROCKEFELLER PLAZA
NEW YORK, N. Y. 10112
TELEPHONE: 212 307-4100
TELEX: 127429
TELECOPIER: 212-307-4836

333 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071
TELEPHONE: 213 253-4000
TELEX: 194418
TELECOPIER: 213-817-2368

TELEPHONE: 202 862-4700
TELEX: 6974539-DONLARD
CABLE ADDRESS: DONLARD, D. C.
TELECOPIER: 202-785-1058

130 RUE DU FAUBOURG SAINT-HONORE
75008 PARIS
TELEPHONE: 1-42-25-47-10
TELEX: 290907
TELECOPIER: 1-42-56-08-06

WRITER'S DIRECT DIAL NUMBER
202 862- 4723

December 22, 1986

FEDERAL EXPRESS

Victor Franklin, Esq.
United States Environmental
Protection Agency
230 South Dearborn Street
Chicago, Illinois 60604

Re: EKCO Housewares, Inc.
EPA I.D. No. OHD 045 205 424

Dear Mr. Franklin:

Thank you for the opportunity for Ekco to informally respond to the allegations and issues raised by the RCRA complaint filed against it on November 6, 1986. We hope this letter will provide a framework for meaningful negotiation with EPA and OEPA towards fashioning a remedy at the site without the need for litigation.

First, we believe the record shows Ekco to have been overwhelmingly cooperative with both state and federal authorities. Ekco has allowed unrestricted site access and has invited OEPA's and EPA's participation in investigating and remediating site conditions. Ekco has complied to the letter with both formal and informal directives from both agencies. We were therefore quite surprised when EPA brought this cooperation to a halt and commenced adversarial proceedings by abruptly serving a RCRA complaint on Ekco's plant manager, Tom Shingleton, during a meeting with EPA to discuss Ekco's ongoing remedial plan.

Frankly, we believe the filing of a complaint in this case to have been unnecessary and counter-productive. It is in derogation of the cooperative effort which has been

RECEIVED
JAN - 2 1987
U.S. EPA REGION V
WASTE MANAGEMENT DIVISION
HIGHLIGHTS WASTE ENVIRONMENTAL GROUP

Victor Franklin, Esq.
December 22, 1986

2

undertaken with respect to the site as well as Ekco's good-faith efforts to respond meaningfully and expeditiously to both agencies.

As indicated by letter dated December 9, 1986 to Walter Nied of EPA, Ekco plans to proceed with the remedial plan presented to EPA over the past several months. Ekco nevertheless intends to vigorously oppose the imposition of civil penalties against it. We are satisfied that EPA's civil penalty policy does not counsel a penalty on the facts of this case.

SYNOPSIS OF REGULATORY
ACTIVITY AT THE SITE

Ekco's discharge to its on-site aeration lagoon has, since 1972, been pursuant to a valid permit, No. C 309 502, issued to it by OEPA. On January 30, 1973, OEPA issued a Ground Water Evaluation regarding the site which noted that "approximately .2 MGD of wastewater containing heavy metals, solids and alkalines is discharged to the lagoon when the [effluent] line is in operation." OEPA further noted that there is "no surface discharge from the lagoon," and that the "underlying aquifer is well protected from lagoon leakage by the relatively impermeable clays and shales" beneath the lagoon. Between 1972 and 1985, only nominal amounts of wastewaters were discharged. Since 1980, no heavy metals have been discharged. The permit was valid and in effect until early 1985, when all discharges to the lagoon were ceased. */

*/ In July, 1983, OEPA informed Ekco that its NPDES Number was being changed to 3IC00009. In October of 1980, Ekco voluntarily notified USEPA of hazardous waste activity, and received identification number OH00452-05424.

Victor Franklin, Esq.
December 22, 1986

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On July 20, 1984, OEPA conducted a RCRA inspection at the facility which noted several primarily administrative violations of Ohio hazardous waste generator regulations. In an August 1, 1984 letter from OEPA to Ekco, Mr. Rodney Beals summarized these alleged violations and stated that "pending verification by this Agency, this surface lagoon may be considered a hazardous waste surface impoundment. . . ." A meeting was held on August 10, 1984 to develop a course of action to remedy suspected VOC contamination in the lagoon area. Within five days of that meeting, on August 15, 1984, Ekco submitted formal plan to remediate any such site contamination. The plan included the construction of an on-site extraction well and air-stripper, at a cost to Ekco of \$106,000.00. By letter dated August 23, 1984, OEPA responded that "the plan of action and time schedule proposed by [Ekco's contractor] appear to adequately address the necessary questions in a time frame that is acceptable to this office."

Over the next eighteen months, several meetings between Ekco and OEPA took place as the site remedial plan was developed. On August 22, 1984, the classification of the lagoon as a RCRA surface impoundment was again raised by OEPA, and the agency stated that "a RCRA closure of the surface impoundment will be necessary and will be discussed with you in detail as part of the remedial action." Nevertheless, although the agency undoubtedly was cognizant of the potential requirement of a TSD application, Ekco was never asked to submit an application either informally or as a condition to closing the lagoon area.

Ekco and OEPA met again on August 31, 1984, and Ekco's contractor proposed a plan to determine the extent, if any, of ground water contamination at the site and to efficiently clean up such contamination. The plan included water and soil sampling and analysis, construction and testing of a pilot air stripper, and construction of a permanent air stripper. Again OEPA stated, by letter dated September 20, 1984, that the "proposed plan of action appears to adequately address the apparent problem in a period of time that is acceptable to this office."

Victor Franklin, Esq.
December 22, 1986

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On January 7, 1985 OEPA, after a RCRA reinspection of the facility, stated that the "facility now appears in general compliance with the applicable Ohio Hazardous Waste generator regulations...." Once again, the agency did not condition its approval or the continued cooperative closure efforts on Ekco's applying for interim status.

Subsequent meetings between OEPA and Ekco took place over the next several months, during which time Ekco installed the air stripper and conducted the sampling mandated by OEPA. On December 17, 1985 OEPA sent a letter to Ekco acknowledging that the air stripper was removing VOCs to below detection limits and that no VOCs were detected off-site, and requesting certain additional monitoring be undertaken. The letter went on to state: "I would like to express my appreciation for your [Ekco's] prompt and appropriate actions in this matter." Ekco continues to use the air stripper and conduct regular monitoring. Sampling data, which has been submitted to OEPA and EPA, indicates that the continuous extraction of VOC's from the aquifer has substantially reduced their concentration in the groundwater. It is expected that continued use of the air stripper will ultimately reduce concentration of VOCs in the groundwater below detection limits.

In July, 1985 Ekco discovered a second apparent problem at the facility, heavy metal contamination in the area of the lagoon. Ekco then had its contractor perform additional sampling to determine the extent of the contamination. Results of this sampling were immediately communicated to OEPA, and on August 28, 1985 Ekco submitted an analysis of soil samples collected from the lagoon area. In response, on February 28, 1986, OEPA informed Ekco that it was storing hazardous waste in the impoundment without a state hazardous waste permit. OEPA advised Ekco that action would be taken on the case within 90 days, and a meeting would be scheduled within 30 days.

Subsequently, USEPA became involved in this matter. On June 3, 1986, Ekco met with EPA in order to develop a closure plan for the site. Ekco solicited quotations for analysis and remediation, (approximately \$425,000.00). In

Victor Franklin, Esq.
December 22, 1986

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the meantime, Ekco continued to operate the air stripper as an on-site ground water reclamation project and forwarded sampling analyses to OEPA (and, later, EPA) on a regular basis.

On July 15, 1986, Ekco informed Walter Nied that it had retained the services of Floyd Brown Associates, Ltd. ("FBA") to develop a closure plan for the lagoon area in accordance with the Ohio code and RCRA. After meeting with FBA on October 21, 1986, Ekco notified EPA that it would undertake more detailed sampling and analysis to scope out the closure plan. The data generated from this round of sampling was presented to EPA at a November 6, 1986 meeting. FBA and Ekco presented to EPA a proposal for additional sampling (funded by Ekco at a cost of \$29,500.00). EPA agreed with the proposal, then abruptly served Ekco with a RCRA complaint.

CONCLUSIONS

We believe EPA's decision to file an administrative complaint in this matter seeking civil penalties to have been unnecessary and counter-productive. Ekco has, as acknowledged by OEPA on several occasions, fully and promptly cooperated with the agencies, inviting their participation, allowing site access, forwarding data, and funding all remedial steps requested by OEPA and EPA. The plan informally worked out during the continued negotiations between Ekco and the agencies would accomplish the RCRA closure sought by the complaint without the attendant cost of unnecessary litigation. Indeed, Walter Nied has stated the informal plan may be implemented in lieu of the closure plan ordered in the complaint. To date Ekco has spent \$185,000.00 at the facility, at OEPA's or EPA's direction. Thus, Ekco, OEPA, and EPA have worked together for several years to maintain appropriate environmental safeguards at the facility.

The penalty requested by EPA is inappropriate in this context. Ekco discharged to the lagoon pursuant to a valid NPDES permit, and OEPA, since 1973, was aware of the nature of the effluent covered by the permit. Neither agency

Victor Franklin, Esq.
December 22, 1986

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made Ekco's submission of an application a condition to closure of the lagoon. Moreover, OEPA and EPA raised the issue of the lagoon's regulation as an impoundment, but apparently never followed up on it until the complaint was served. Although the agencies undoubtedly were aware that Ekco had not applied for a TSD permit, neither OEPA nor EPA advised Ekco, during the protracted period of dealings between the parties, to submit an application. After the second RCRA inspection by OEPA found Ekco to be in compliance with Ohio generator requirements, Ekco reasonably believed the facility to be in compliance with all applicable regulatory requirements. Since 1985, Ekco has been working closely with first OEPA and then EPA towards accomplishing a RCRA closure of the lagoon.

During this time neither agency ever issued Ekco a formal notice of violation regarding the allegations of the complaint. Ekco placed itself voluntarily into the hands of the appropriate agency, and worked to effectuate the common goal of accomplishing a closure. The filing of a complaint in this matter was incongruous to say the least.

Ekco desires this matter be put back on the keel it was on before the complaint was filed. Simply put, both EPA's and Ekco's resources are better spent by continuing the cleanup process which was interrupted for reasons we simply do not understand. To further demonstrate its good faith, Ekco is continuing the closure efforts previously acknowledged by EPA. It is manifest to Ekco that the common goal can be realized more efficiently and expeditiously through continued cooperation rather than litigation.

Recent data generated by Ekco demonstrates that conditions at the facility are not serious and can be remedied effectively and expeditiously. The VOC contamination in the groundwater has been steadily decreased by Ekco's operation of the air stripper since November, 1985. Continued extraction and air stripping will eventually reduce their concentration to below detection limits. Metals contamination of the soil is limited to the lagoon area, and soil borings show no lateral migration. No off-site contamination of any kind has been discovered.

Victor Franklin, Esq.
December 16, 1986

7

Given the nature of Ekco's alleged violations, its cooperation with the agencies, and the limited actual contamination, litigation is unnecessary.

861008
We hope to address these issues with you on January 6, 1987 in Chicago. In particular, we would appreciate your providing the basis for the calculation of the \$79,255 civil penalty amount, and any other documents you deem relevant to the discussion. We would also like the opportunity to review EPA's and the state's enforcement files relating to this matter. Please call me if you have any questions.

Sincerely,



Steven A. Tasher

cc: Walter Nied (EPA)
Edward Kitchen (OEPA)

AGREEMENT AND FINAL ORDER

Company Name: EXCO HOUSEWARES INC.

Identification Number: 040 045 205 424

Docket Number: V-W R-87-003

Case Name: WATER WCO ORG Assignee: WATER ADMIN

Summary of Agreement: PARTIAL CAPO COMMITTEE

EXCO TO 3000(W) NEGOTIATIONS

BY CAPO RE-ENTRY CLOSURE

RE-ENTRY

CONCURRENCES ON DRAFT CAPO

RES Assignee: WEN Date: 3-17-87 Agree: ☒ Disagree: ☐

Chief, RCRA Env. Unit: WEN Date: 3-17-87 Agree: ☒ Disagree: ☐

Chief, RCRA Env. Sect: WEN Date: 3-17-87 Agree: ☒ Disagree: ☐

Asst. Regional Counsel: WEN Date: 3-17-87 Agree: ☒ Disagree: ☐

Chief, SW E R. Sect: WEN Date: 3-17-87 Agree: ☒ Disagree: ☐

RETURN TO ORG ASSIGNEE FOR TRANSMITTAL OF DRAFT TO THE FACILITY

APPROVALS

RES Assignee: WEN Date: 10-20-87 Agree: ☒ Disagree: ☐

Chief, RCRA Env. Unit: WEN Date: 10-20-87 Agree: ☒ Disagree: ☐

Chief, RCRA Env. Sect: WEN Date: 10-20-87 Agree: ☒ Disagree: ☐

Chief, HWB: WEN Date: 10-20-87 Agree: ☒ Disagree: ☐

Asst. Regional Counsel: WEN Date: 10-20-87 Agree: ☒ Disagree: ☐

Chief, SW E R. Sect: WEN Date: 10-20-87 Agree: ☒ Disagree: ☐

Chief, SW E R. Branch: WEN Date: 10-20-87 Agree: ☒ Disagree: ☐

Deputy Regional Counsel: WEN Date: 10-20-87 Agree: ☒ Disagree: ☐

Regional Counsel: WEN Date: 10-20-87 Agree: ☒ Disagree: ☐

Investigator: WEN Date: 10-20-87 Agree: ☒ Disagree: ☐

Regional Counsel: WEN Date: 10-20-87 Agree: ☒ Disagree: ☐

Regional Counsel: WEN Date: 10-20-87 Agree: ☒ Disagree: ☐

Regional Counsel: WEN Date: 10-20-87 Agree: ☒ Disagree: ☐



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
230 SOUTH DEARBORN ST.
CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF:
5HE-12

NOV 6 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Prentice-Hall Corporation System, Inc.
Registered Agent for
Ekco Housewares, Inc.
Huntington Building
Cleveland, Ohio 44115

Re: Complaint, Findings of Violation
and Compliance Order
Ekco Housewares, Inc.
EPA I.D. No.: OHD 045 205 424

Dear Sir or Madam:

Enclosed please find a Complaint and Compliance Order which specifies this Agency's determination of certain violations by Ekco Housewares, Inc. of the Resource Conservation and Recovery Act (RCRA) as amended, 42 U.S.C. §6901 *et seq.* This Agency's determination is based on an inspection of the facility located at 359 State Extension N.W., Massillon, Ohio 44648 by the Ohio Environmental Protection Agency (OEPA), and other information in our files. The Findings in the Complaint state the reasons for such a determination. In essence, the facility failed to meet particular requirements of RCRA relating to storage of hazardous waste in a surface impoundment, groundwater monitoring, financial responsibility and a closure plan.

Accompanying the Complaint is a Notice of Opportunity for Hearing. Should you desire to contest the Complaint, a written request for a hearing is required to be filed with Ms. Beverly Shorty, Regional Hearing Clerk (5MF-14), United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, within 30 days from receipt of this Complaint. A copy of your request should also be sent to Jonathan McPhee, Office of Regional Counsel (5C-16) at the above address.

Regardless of whether you choose to request a hearing within the prescribed time limit following service of this Complaint, you are extended an opportunity to request an informal settlement conference.

Sincerely,

Enclosure

Edward Fitch, NEPA-CO

Reaney, David - EPA-NEO

Johnathan McPhee, GNC 50-16 ✓

Derise Reape

Regional Hearing Clerk, SMF-14

OH Permit Unit, SHS-13

ONE 12JCK-UNITED: Harris: 6-0992: 7/24/86

STAFF ATTORNEY

SECTION C

WILLIAM C. CARR

THE FUTURE

REGIONAL COUNCIL

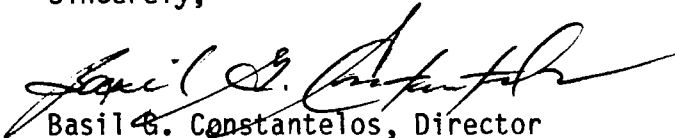
OTHER

OTHER

DATE	TIME	UNIT	SECT	SECT
1/8/60	10:28	10	10	10

If you have any questions or desire to request an informal conference for the purpose of settlement with Waste Management Division staff, please contact Walter Nied, United States Environmental Protection Agency, RCRA Enforcement Section (5HE-12), 230 South Dearborn Street, Chicago, Illinois 60604. His phone number is (312) 886-0992.

Sincerely,


Basil G. Constantelos, Director
Waste Management Division

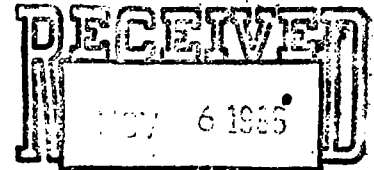
Enclosure

cc: Thomas J. Shingleton, Plant Manager
Ekco Housewares, Inc.

Edward Kitchen, OEPA-CO

Rodney Beals, OEPA-NEDO

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V



IN THE MATTER OF:

EKCO HOUSEWARES, INC.
P.O. BOX 560
MASSILLON, OHIO 44646

EPA I.D. No: OHD 045 205 424

DOCKET NO.

COMPLAINT, FINDINGS OF
VIOLATION AND COMPLIANCE ORDER

V-W- 87 R-008

This Complaint is filed pursuant to Section 3008(a)(1) of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. §6928(a)(1) and the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR Part 22. The Complainant is the Director, Waste Management Division, Region V, United States Environmental Protection Agency (U.S. EPA). The Respondent is Ekco Housewares, Inc., P.O. Box 560, Massillon, Ohio 44646.

This Complaint is based on information obtained by the U.S. EPA, including a compliance inspection conducted by the Ohio Environmental Protection Agency (OEPA) on July 20, 1984. At the time of the inspection, violations of applicable State and Federal regulations were identified.

Pursuant to 42 U.S.C. §6928(a)(1), and based on the information cited above, it has been determined that Ekco Housewares, Inc., has violated 40 CFR 270.10(a); 40 CFR 265.90, 91, 92, 93 and 94; 40 CFR 265.140; 40 CFR 265.142, 143, 144, 145, 146, and 147; and 40 CFR 265.112, and parallel Ohio Administrative Code (OAC) regulations OAC 3745-50-40(a); OAC 3745-65-90, 91, 92, 93, and 94; OAC 3745-66-40, 42, 43, 44, 45, 46, and 47; and OAC 3745-66-12.

JURISDICTION

Jurisdiction for this action is conferred upon U.S. EPA by Sections 2002(a)(1), 3006(b), and 3008 of RCRA, 42 U.S.C. §6912(a)(1), §6926(b), and §6928 respectively.

From July 15, 1983, until January 31, 1986, the State of Ohio had Phase I interim authorization pursuant to Section 3006 of RCRA, 42 U.S.C. §6926, to administer a hazardous waste program in lieu of the Federal program. This authorization allowed either the State or U.S. EPA to enforce Ohio hazardous waste statutes and regulations, where applicable, in lieu of Federal statutes. U.S. EPA retained authority in matters related to the issuance of final RCRA Permits during this period. Accordingly, this Complaint and Compliance Order seeks to enforce both Federal and State regulations as applicable.

FINDINGS OF VIOLATION

This determination of violation is based on the following:

1. Respondent, Ekco Housewares, Inc., is a person defined by Section 1004(15) of RCRA, 42 U.S.C. §6903(15) and OAC 3745-50-10(A)(2)(62), who owns and operates a facility at 359 State Avenue Extension, N.W., Massillon, Ohio 44646 that generates and stores hazardous waste.
2. Section 3010(a) of RCRA, 42 U.S.C. §6930(a), requires any person who generates or transports hazardous waste, or owns or operates a facility for the treatment, storage, or disposal of hazardous waste, to notify U.S. EPA of such activity within 90 days of the promulgation of regulations under Section 3001 of RCRA. Section 3010 of RCRA also provides that no hazardous waste subject to regulations may be transported, treated, stored or disposed of unless the required notification has been given.

3. U.S. EPA first published regulations concerning the generation, transportation, treatment, storage or disposal of hazardous waste on May 19, 1980. These regulations are codified at 40 CFR Parts 260 through 265. Notification to U.S. EPA of hazardous waste activity was required in most instances no later than August 18, 1980.

4. Section 3005(a) of RCRA requires U.S. EPA to publish regulations requiring each person owning or operating a hazardous waste treatment, storage, or disposal facility to obtain a RCRA Permit. Such regulations were published on May 19, 1980, and are codified at 40 CFR Parts 270 and 271 (formerly Parts 122 and 123). The regulations require that persons who treat, store, or dispose of hazardous waste submit Part A of the permit application in most instances no later than November 19, 1980.

5. Section 3005(e) of RCRA provides that an owner or operator of a facility shall be treated as having been issued a permit pending final administrative disposition on the permit application provided that: (1) the facility was in existence on November 19, 1980; (2) the requirements of Section 3010(a) of RCRA concerning notification of hazardous waste activity have been complied with; and (3) an application for a permit has been made. This statutory authority to operate is known as interim status. U.S. EPA regulations implementing these provisions are found at 40 CFR Part 270.

6. The Respondent, Ekco Housewares, Inc., owns and operates a facility at 359 State Avenue Extension N.W., Massillon, Ohio. The Respondent is a foreign corporation whose registered agent is Prentice-Hall Corporation System, Inc., Huntington Building, Cleveland, Ohio 44115.

7. On August 18, 1980, Respondent filed a notification of hazardous waste activity for this facility with U.S. EPA pursuant to Section 3010 of RCRA. Respondent failed to submit Part A of their permit application to treat, store and dispose of hazardous waste by November 19, 1980, as required by 40 CFR 270.10 (a) and Section 3005 of RCRA thereby failing to qualify for interim status.

8. The Respondent stores spent halogenated solvents used in degreasing and waste that is E.P. toxic for cadmium. These wastes have been identified and listed as hazardous wastes under Section 3001 of the Act (U.S. EPA Hazardous Waste Nos. F001 and D006). The storage of hazardous waste was done without a permit and without having achieved interim status, in violation of Section 3005(a) of RCRA. Interim status was not achieved because the Respondent failed to submit Part A of the application for a permit by November 19, 1980, as required by 40 CFR.270.10 and Section 3005 of RCRA.

9. On July 20, 1984, OEPA conducted a RCRA inspection of Respondent's facility and observed several Ohio hazardous waste generator regulations violations. As documented in a January 7, 1985, OEPA letter to the Respondent, these violations have been resolved and this facility now appears to be in general compliance with the applicable Ohio hazardous waste generator regulations, Ohio Administrative Code (OAC) 3745-50 through 3745-52.

10. The August 1, 1984, OEPA cover letter which accompanied a copy of the July 20, 1984, RCRA inspection form, stated the following:

- a. Analysis has confirmed that a number of volatile organic compounds including 1,1,1, trichloroethane (TCA) and trichloroethylene (TCE) have been introduced into the groundwater aquifer from an unknown source or sources.

- b. Ekco Housewares, Inc., has used either TCA or TCE in degreasing operations for at least the past 20 years.
- c. Solvent contaminated water generated primarily from condensation within the degreaser unit has been physically segregated and discharged via storm sewers to the on-site surface lagoon since at least 1979.
- d. Pending clarification by the OEPA, this surface lagoon may be considered a hazardous waste surface impoundment because of the discharge of listed hazardous waste to the lagoon and the subsequent storage of the hazardous waste within the lagoon.

11. An August 22, 1984, OEPA letter to the Respondent documented the following issues during a meeting conducted at the OEPA Northeast District Office on August 10, 1984:

- a. Three potential sources of the groundwater contamination exist as identified by sampling conducted by the Respondent: the north tank farm, the west tank farm, and the lagoon;
- b. Since listed hazardous waste has been placed in the Respondent's lagoon since the effective date of RCRA, the lagoon is classified as a hazardous waste surface impoundment;
- c. A RCRA closure of the surface impoundment will be necessary; and
- d. A thorough hydrogeological study of the immediate area should be conducted expediently to identify the specific source or sources of the contamination and the extent of contamination.

12. A January 7, 1985, OEPA letter to the Respondent documented the following issues discussed during a meeting conducted at OEPA, Northeast District Office on December 5, 1984:

- a. Leakage from the Respondent's on-site surface impoundment may also be responsible for the identified groundwater contamination, the elimination of all contaminant sources appears imperative to abate further contamination;
- b. The surface impoundment should be closed per RCRA closure standards and a RCRA closure plan addressing the requirements of the Closure Performance Standard (OAC 3745-66-11) for the surface impoundment must be submitted to the OEPA.

13. An April 23, 1985, OEPA letter to the Respondent in reply to the Respondent's February 19, 1985, letter regarding groundwater contamination at their facility, addressed the following issues:

- a. One of the potential groundwater contamination sources at the Ekco facility is the possible seepage of spent solvents from the on-site lagoon. Sediment samples collected from the lagoon by the Respondent on May 22, 1984, contained approximately 20 mg/kg of Volatile Organic Compounds (VOC's);
- b. Hazardous substances have been released to the environment, and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) requires notification to the U.S. EPA of hazardous substance releases;

- c. A remedial approach should be enacted that will eliminate the migration of contaminants to the aquifer;
- d. As detailed in the Respondent's February 19, 1985, letter, water from the lagoon will be treated via the proposed air stripping unit; and
- e. Upstream and downstream samples from Newman Creek should be collected and analyzed for VOC's at monthly intervals to ensure that leaching from the lagoon to the stream is not occurring.

14. A July 11, 1985, OEPA letter to the Respondent which summarized issues addressed during a June 11, 1985, meeting stated that the Respondent has agreed to collect soil samples from the surface impoundment and analyze them for at least VOC's. Also, it is stated in this letter that due to termination of discharge to the impoundment and infiltration, the surface impoundment is now dry.

15. A February 28, 1986, OEPA letter to the Respondent informed the Respondent of the following:

- a. Soil cores were collected from the surface impoundment on July 1, 1985, and analyzed by the Respondent for Volatile Organic Compounds (VOC) and metals (both total and E.P. Toxicity analyses);
- b. The results of these analyses indicated the presence of VOC's ranging from 14 to 71 mg/kg;
- c. Two of the five soil samples exhibited characteristics of E.P. Toxicity with concentrations of cadmium exceeding 1 ppm (1.8 ppm and 2.0 ppm);

- d. These results indicated that the surface impoundment contains wastes that are hazardous as defined by the Ohio Administrative Code (OAC) 3745-51-24;
- e. The storage of hazardous waste in a surface impoundment without a State hazardous waste permit is in violation of the Ohio Revised Code (ORC) 3735.02; and
- f. Due to the serious nature of the violations, at Ekco Housewares, Inc., is classified as a High Priority Violator.

16. A record review conducted by the U.S. EPA, indicated that the Respondent does not have financial assurance for its surface impoundment, a hazardous waste facility, in violation of 40 CFR 265.140 and OAC 3745-66-40.

17. Respondent is in violation of the regulations adopted under the Resource Conservation and Recovery Act in the following areas:

- a. Respondent failed to submit a Part A permit application, as set forth in Finding 15, in violation of ORC 3735.02 and 40 CFR 270.10(a);
- b. Respondent failed to comply with the groundwater monitoring requirements in violation of OAC 3745-65-90, 91, 92, 93 and 94 and 40 CFR 265.90, 91, 92, 93 and 94;
- c. Respondent failed to comply with the closure plan requirements as set forth in Finding 12, in violation of OAC 3745-66-12 and 40 CFR 265.112; and
- d. Respondent failed to comply with the financial assurance requirement as set forth in Finding 16, in violation of OAC 3745-66-40 and 40 CFR 265.140.

COMPLIANCE ORDER

Respondent having been initially determined to be in violation of the above cited rules and regulations, the following Compliance Order pursuant to Section 3008 of RCRA, 42 U.S.C. §6928, is entered:

A. Respondent shall immediately upon this Order becoming final cease all treatment, storage or disposal of any hazardous waste except such treatment, storage or disposal as shall be in compliance with the Standards for Hazardous Waste Treatment, Storage, and Disposal Facilities except as provided for in Paragraph B below.

B. The Respondent shall, within thirty (30) days of this Order becoming final, achieve compliance with the following requirements:

1. Submit to U.S. EPA a closure plan for the surface impoundment prepared in accordance with the standards for such plans contained in 40 CFR 265.111 through 265.120. The closure plan shall include but not be limited to a sampling and analysis plan to determine the extent of hazardous waste in the surface impoundment and in the underlying and surrounding soils. The plan shall also provide for the treatment and/or removal and proper disposal of all hazardous waste in the surface impoundment including all contaminated soils and/or groundwater. The U.S. EPA will review this closure plan and either approve, disapprove or modify the plan.
2. Upon approval of the closure plan by the U.S. EPA, the Respondent shall immediately initiate and complete the activities in the plan in accordance with the schedule contained therein.

3. Develop and submit: (a) a groundwater monitoring program pursuant to 40 CFR 265.90; (b) a schedule for the installation and operation of a groundwater monitoring program pursuant to 40 CFR 265.91; (c) a schedule implementing an adequate groundwater sampling and analysis plan pursuant to 40 CFR 265.92; and (d) a schedule for complying with the recordkeeping and reporting requirements of 40 CFR 265.94. The U.S. EPA will review this groundwater monitoring program and either approve or modify the plan.
4. Upon approval of the groundwater monitoring program by U.S. EPA, the Respondent shall immediately initiate and complete the activities in the program in accordance with the schedules contained therein.
5. Comply with the financial responsibility requirements for closure until closure has been certified, pursuant to 40 CFR 264.140 through 151.

C. Respondent shall notify U.S. EPA in writing upon achieving compliance with this Order and any part thereof. This notification shall be submitted no later than the time stipulated above to the U.S. EPA, Region V, Waste Management Division, 230 South Dearborn Street, Chicago, Illinois 60604. Attention: Mr. Walter Nied, RCRA Enforcement Section.

A copy of these documents and all correspondence with U.S. EPA regarding this Order shall also be submitted to Mr. Edward Kitchen, Ohio Environmental Protection Agency, P.O. Box 1049, Columbus, Ohio 43266-1049.

Notwithstanding any other provision of this Order, an enforcement action may be brought pursuant to Section 7003 of RCRA or other statutory authority where the handling, storage, treatment, transportation, or disposal of solid or hazardous

waste at this facility may present an imminent and substantial endangerment to human health or the environment.

PROPOSED CIVIL PENALTY

In view of the above determination and in consideration of the seriousness of the violations cited herein, the potential harm to human health and the environment, the continuing nature of the violations, and the ability of the Respondent to pay penalties, the Complainant proposes to assess a civil penalty in the amount of SEVENTY-NINE THOUSAND TWO HUNDRED FIFTY-FIVE DOLLARS (\$79,255) against the Respondent, Ekco Housewares, Inc., pursuant to Sections 3008(c) and 3008(g) of RCRA, 42 U.S.C. §6928. Payment shall be made by certified or cashier's check payable to the Treasurer of the United States and shall be mailed to U.S. EPA, Region V, P.O. Box 70753, Chicago, Illinois 60673. Copies of the transmittal of the payment should be sent to both the Regional Hearing Clerk, Planning and Management Division, and the Solid Waste and Emergency Response Branch Secretary, Office of Regional Counsel, U.S. EPA, 230 South Dearborn Street, Chicago, Illinois 60604.

Failure to comply with any requirements of the Order shall subject the above-named Respondent to liability for a civil penalty of up to TWENTY-FIVE THOUSAND DOLLARS (\$25,000) for each day of continued noncompliance with the deadlines contained in this Order. U.S. EPA is authorized to assess such penalties pursuant to RCRA Section 3008(c).

NOTICE OF OPPORTUNITY FOR HEARING

The above-named Respondent has the right to request a hearing to contest any material factual allegation set forth in the Complaint and Compliance Order or the appropriateness of any proposed compliance schedule or penalty. Unless said

Respondent has requested in writing a hearing not later than thirty (30) days from the date this Complaint is served, Respondent may be found in default of the above Complaint and Compliance Order.

To avoid a finding of default by the Regional Administrator you must file a written answer to this Complaint with the Regional Hearing Clerk, Planning and Management Division, U.S. EPA Region V, 230 South Dearborn Street, Chicago, Illinois 60604, within thirty (30) days of receipt of this notice. A copy of your answer and any subsequent documents filed in this action should be sent to Johnathan McPhee, Assistant Regional Counsel, at the same address. Failure to answer within thirty days of receipt of this Complaint may result in a finding by the Regional Administrator that the entire amount of penalty sought in the Complaint is due and payable and subject to the interest and penalty provisions contained in the Federal Claims Collection Act of 1966, 31 U.S.C. §§3701 et seq.

Your answer should clearly and directly admit, deny, or explain each of the factual allegations of which Respondent has knowledge. Said answer should contain (1) a definite statement of the facts which constitute the grounds of defense, and (2) a concise statement of the facts which Respondent intends to place at issue in the hearing. The denial of any material fact, or the raising of any affirmative defense, shall be construed as a request for a hearing.

The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR Part 22, are applicable to this administrative action. A copy of these Rules is enclosed with this Complaint.


SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, Respondent may confer informally with U.S. EPA concerning: (1) whether the alleged violations in fact occurred as set forth above; (2) the appropriateness of the compliance schedule; and (3) the appropriateness of any proposed penalty in relation to the size of Respondent's business, the gravity of the violations, and the effect of the proposed penalty on Respondent's ability to continue in business.

Respondent may request an informal settlement conference at any time by contacting this office. Any such request, however, will not affect either the thirty-day time limit for responding to this Complaint or the thirty-day time limit for requesting a formal hearing on the violations alleged herein.

U.S. EPA encourages all parties to pursue the possibilities of settlement through informal conferences. A request for an informal conference should be made in writing to Walter Nied, RCRA Enforcement Section (5HE-12), at the address cited above, or by calling him at (312) 886-0992.

Dated this 5th day of November, 1986.


Basil G. Constantelos, Director
Waste Management Division
Complainant
U.S. Environmental Protection Agency
Region V

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing Complaint to be served upon the persons designated below, on the date below, by causing said copies to be deposited in the U.S. Mail, First Class and certified-return receipt requested, postage prepaid, at Chicago, Illinois, in envelopes addressed to:

Prentice-Hall Corporation System, Inc.
Registered Agent for
Ekco Housewares, Inc.
Huntington Building
Cleveland, Ohio 44115

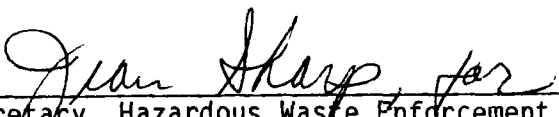
and

Thomas J. Shingleton, Plant Manager
Ekco Housewares, Inc.
P.O. Box 560
Massillon, Ohio 44648-0560

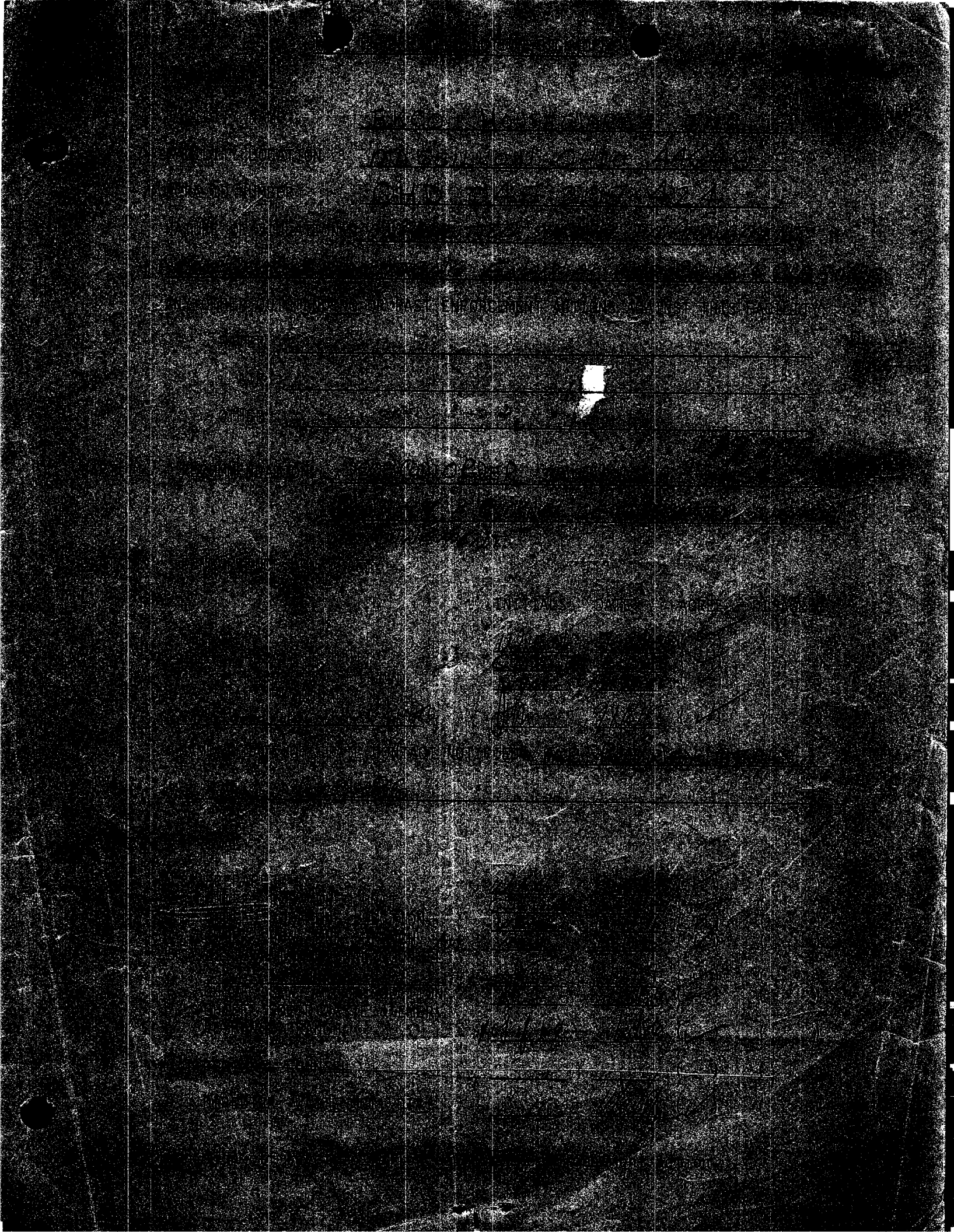
I have further caused the original of the Complaint and this Certificate of Service to be served in the Office of the Regional Hearing Clerk located in the Planning and Management Division, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, on the date below.

These are said persons' last known addresses to the subscriber.

Dated this 6 day of November, 1986.



Secretary, Hazardous Waste Enforcement Branch
U.S. EPA, Region V



EKCO HOUSEWARES INC.

AUGUST 22 1986

THE ECONOMIC BENEFIT OF A 43 MONTH DELAY
AS OF THE PENALTY PAYMENT DATE, 61 MONTHS
AFTER THE INITIAL DATE OF NONCOMPLIANCE

\$ 15275
=====

->->->->-> THE ECONOMIC SAVINGS CALCULATION ABOVE <-<-<-<-<-<-
USED THE FOLLOWING VARIABLES:

USER SPECIFIED VALUES

1. CASE NAME=	EKCO HOUSEWARES INC.		
2. INITIAL CAPITAL INVESTMENT =		\$	0
3. ONE-TIME NONDEPRECIABLE EXPENDITURE =\$		27200	1981 DOLLARS
(TAX DEDUCTIBLE EXPENSE)			
4. ANNUAL O&M EXPENSE=		\$	1026 1982 DOLLARS
5. FIRST MONTH OF NONCOMPLIANCE=			11, 1981
6. COMPLIANCE DATE=			6, 1985
7. PENALTY PAYMENT DATE=			12, 1986

STANDARD VALUES

8. USEFUL LIFE OF POLLUTION CONTROL EQUIPMENT =			15 YEARS
9. INVESTMENT TAX CREDIT RATE =			10.00 %
10. MARGINAL INCOME TAX RATE =			50.00 %
11. ANNUAL INFLATION RATE=			4.50 %
12. DISCOUNT RATE =			18.69 %
13. AMOUNT OF LOW INTEREST FINANCING =		\$	0

statement.

He submitted the following partial estimates dated JAN 30 1986:

Projected annual sales are \$ 200,000,000.

He stated that sales for the 6 months ended Dec 31 1985 were even compared to the same period last year. Profit for the period was even

HISTORY
01/31/86

+JOSEPH DUNBECK, PRES
DONALD J. HALBE, TREAS

KENNETH PETRINE, SEC
JAMES OSEBOLD, ASST TREAS

DIRECTOR(S): The officers identified by (+) and 7 others.

Incorporated Delaware Aug 24 1984. Authorized capital consists of 1,500,000 shares common stock, \$.01 par value and 100,000 shares preferred stock, \$1 par value.

Business started Sep 1984 by officers.

90% of capital stock is owned by Fulcrum Partnership Ltd. 10% of capital stock is owned by 35 stockholders.

DUNBECK. Appears as president.

PETRINE. Appears as secretary.

HALBE. Appears as treasurer.

OSEBOLD. Appears as assistant treasurer.

INDIRECT SUBSIDIARIES:

E-Z Por Corporation, Wheeling, IL. Manufactures plain aluminum foilware, plastic kitchenware and sanitary paper products. The Ekco Group Inc. guarantees liabilities.

Ekco Canada Inc., Toronto, Canada. Manufactures kitchen cutlery, metal utensils, bakeware and cookware. The Ekco Group Inc. guarantees liabilities.

OPERATION
01/31/86

Subsidiary of Fulcrum Partnership Ltd, New York, NY started 1981 which operates as a management investment firm. Parent company owns 90% of capital stock. Parent company has no other subsidiaries. Intercompany relations: Undetermined.

As noted, this company is a subsidiary of Fulcrum Partnership Ltd., DUNS #12-250-8773, and reference is made to that report for background information on the parent company and its management.

Through subsidiaries (one direct and two indirect) manufactures kitchen cutlery, metal utensils, bakeware and cookware, plain aluminum foilware, plastic kitchenware and sanitary paper products. Sells on 2% 30 net 31 day terms. Has 2,500+ accounts. Sells to commercial concerns. Territory :United States and International (Exports 5-10%).

Season peaks Sep-Nov. Business slow Jan-Mar.

EMPLOYEES: 1,800 including officers. 200 employed here. Employee number does not vary with seasons.

FACILITIES: Rents 200,000 sq. ft. in 1 story brick building in good condition. Premises neat.

LOCATION: Industrial section on well traveled street.

SUBSIDIARIES: Has one wholly-owned subsidiary: Ekco Housewares Inc., Franklin Park, IL, originally started 1888, present control succeeded 1984. Manufactures kitchen cutlery, metal utensils, bakeware and cookware.

07-18(995 /38)

08106

122508773

002

H

IN DATE

DUNS: 11-820-3900
EKCO GROUP INC, THE
(SUBSIDIARY OF FULCRUM
PARTNERSHIP LTD, NEW YORK,
NY)

9234 W BELMONT AVE
AND BRANCH(ES) OR DIVISION(S)
FRANKLIN PARK IL 60131
TEL: 312 678-8600

DATE PRINTED
JUL 18 1986

MFG KITCHEN
CUTLERY, METAL
UTENSILS, BAKEWARE
& COOKWARE,
ALUMINUM FOILWARE,
PLASTIC
KITCHENWARE &
SANITARY PAPER
PRODUCTS

SUMMARY
RATING --

STARTED 1984
PAYMENTS SEE BELOW
SALES \$200,000,000
(PROJ)
EMPLOYS 1,800 (200 HERE)
HISTORY INCOMPLETE
TREND STEADY

SIC NOS.

34 21 34 69 33 53
30 79 26 47

CHIEF EXECUTIVE: JOSEPH DUNBECK, PRES

SPECIAL
EVENTS

01/31/86 Effective Dec 4 1985, Joseph Dunbeck became president.

PAYMENTS REPORTED	(Amounts may be rounded to nearest figure in prescribed ranges) PAYING RECORD	HIGH CREDIT	NOW OWES	PAST DUE	SELLING TERMS	LAST SALE WITHIN
06/86	Ppt	10000	-0-	-0-		4-5 Mos
05/86	Ppt	1000	-0-	-0-	N30	2-3 Mos
	Slow 30	50	-0-	-0-	N30	
04/86	Ppt	250	-0-	-0-		6-12 Mos
	Ppt		-0-	-0-	N30	1 Mo
	Ppt-Slow 90	50	50	50		
	Slow 90-120	250	250	250		2-3 Mos
	(008)	500	-0-	-0-		
02/86	Ppt	50	-0-	-0-	N30	6-12 Mos
01/86	Ppt	50	-0-	-0-		6-12 Mos
	(011)	2500	2500	-0-		2-3 Mos
08/85	Disc	400000	300000	-0-	1/2 10 N30	
	Ppt	15000	15000	-0-	Spec agreement	
	Ppt	15000	15000	-0-	1 10 N30	
	Ppt	10000	-0-	-0-	N30	
	(016)	200000	200000	-0-	N30	2-3 Mos

Payment experiences reflect how bills are met in relation to the terms granted. In some instances payment beyond terms can be the result of disputes over merchandise, skipped invoices etc.

FINANCE

01/31/86 On JAN 30 1986 James Osebold, asst treasurer, declined financial

AUGUST 22 1986

A.	PRESENT VALUE COST OF PURCHASING THE INITIAL POLLUTION CONTROL EQUIPMENT ON TIME AND OPERATING IT THROUGHOUT ITS USEFUL LIFE	\$	30481
B.	PRESENT VALUE COST OF ON-TIME PURCHASE AND OPERATION OF INITIAL POLLUTION CONTROL EQUIPMENT PLUS ALL FUTURE REPLACEMENTS	\$	31051
C.	PRESENT VALUE COST OF DELAYED PURCHASE AND OPERATION OF POLLUTION CONTROL EQUIPMENT PLUS ALL FUTURE REPLACEMENTS	\$	19676
D.	ECONOMIC BENEFIT OF A 43 MONTH DELAY AS OF INITIAL DATE OF NONCOMPLIANCE (EQUALS B MINUS C)	\$	11376
E.	THE ECONOMIC BENEFIT OF A 43 MONTH DELAY AS OF THE PENALTY PAYMENT DATE, 61 MONTHS AFTER THE INITIAL DATE OF NONCOMPLIANCE	\$	27180 =====

->->->->-> THE ECONOMIC SAVINGS CALCULATION ABOVE <-<-<-<-<-<-
USED THE FOLLOWING VARIABLES:

USER SPECIFIED VALUES

1.	CASE NAME=	EKCO HOUSEWARES INC.	
2.	INITIAL CAPITAL INVESTMENT =	\$	0
3.	ONE-TIME NONDEPRECIABLE EXPENDITURE =\$	27200	1981 DOLLARS (EXPENSE IS NOT TAX DEDUCTIBLE)
4.	ANNUAL O&M EXPENSE=	\$	1026 1982 DOLLARS
5.	FIRST MONTH OF NONCOMPLIANCE=	11,	1981
6.	COMPLIANCE DATE=	6,	1985
7.	PENALTY PAYMENT DATE=	12,	1986

STANDARD VALUES

8.	USEFUL LIFE OF POLLUTION CONTROL EQUIPMENT =	15 YEARS
9.	INVESTMENT TAX CREDIT RATE =	10.00 %
10.	MARGINAL INCOME TAX RATE =	50.00 %
11.	ANNUAL INFLATION RATE=	4.50 %
12.	DISCOUNT RATE =	18.69 %
13.	AMOUNT OF LOW INTEREST FINANCING =	\$ 0

AUGUST 22 1986

THE ECONOMIC BENEFIT OF A 43 MONTH DELAY
AS OF THE PENALTY PAYMENT DATE, 61 MONTHS
AFTER THE INITIAL DATE OF NONCOMPLIANCE

\$ 15275
=====

->->->->-> THE ECONOMIC SAVINGS CALCULATION ABOVE <-<-<-<-<-<-
USED THE FOLLOWING VARIABLES:

USER SPECIFIED VALUES

1. CASE NAME=	EKCO HOUSEWARES INC.		
2. INITIAL CAPITAL INVESTMENT =		\$	0
3. ONE-TIME NONDEPRECIABLE EXPENDITURE =\$		27200	1981 DOLLARS
(TAX DEDUCTIBLE EXPENSE)			
4. ANNUAL O&M EXPENSE=		\$	1026 1982 DOLLARS
5. FIRST MONTH OF NONCOMPLIANCE=		11,	1981
6. COMPLIANCE DATE=		6,	1985
7. PENALTY PAYMENT DATE=		12,	1986

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9. INVESTMENT TAX CREDIT RATE =		10.00 %
10. MARGINAL INCOME TAX RATE =		50.00 %
11. ANNUAL INFLATION RATE=		4.50 %
12. DISCOUNT RATE =		18.69 %
13. AMOUNT OF LOW INTEREST FINANCING =	\$	0

A. PRESENT VALUE COST OF PURCHASING THE INITIAL POLLUTION CONTROL EQUIPMENT ON TIME AND OPERATING IT THROUGHOUT ITS USEFUL LIFE	\$	30481
B. PRESENT VALUE COST OF ON-TIME PURCHASE AND OPERATION OF INITIAL POLLUTION CONTROL EQUIPMENT PLUS ALL FUTURE REPLACEMENTS	\$	31051
C. PRESENT VALUE COST OF DELAYED PURCHASE AND OPERATION OF POLLUTION CONTROL EQUIPMENT PLUS ALL FUTURE REPLACEMENTS	\$	19676
D. ECONOMIC BENEFIT OF A 43 MONTH DELAY AS OF INITIAL DATE OF NONCOMPLIANCE (EQUALS B MINUS C)	\$	11376
E. THE ECONOMIC BENEFIT OF A 43 MONTH DELAY AS OF THE PENALTY PAYMENT DATE, 61 MONTHS AFTER THE INITIAL DATE OF NONCOMPLIANCE	\$	27180

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->->->-> THE ECONOMIC SAVINGS CALCULATION ABOVE (-(-(-(-(-(-
USED THE FOLLOWING VARIABLES:

USER SPECIFIED VALUES

1. CASE NAME=	EKCO HOUSEWARES INC.	
2. INITIAL CAPITAL INVESTMENT =	\$	0
3. ONE-TIME NONDEPRECIABLE EXPENDITURE =\$	27200	1981 DOLLARS
(EXPENSE IS NOT TAX DEDUCTIBLE)		
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10. MARGINAL INCOME TAX RATE =	50.00 %
11. ANNUAL INFLATION RATE=	4.50 %
12. DISCOUNT RATE =	18.69 %
13. AMOUNT OF LOW INTEREST FINANCING =	\$ 0

1. CASE NAME= EKCO HOUSEWARES INC.

2. INITIAL CAPITAL INVESTMENT = \$ 0

3. ONE-TIME NONDEPRECIABLE EXPENDITURE =\$ 27200 1981 DOLLARS
(TAX DEDUCTIBLE EXPENSE)

4. ANNUAL O&M EXPENSE= \$ 1026 1982 DOLLARS

5. FIRST MONTH OF NONCOMPLIANCE= 11, 1981

6. COMPLIANCE DATE= 6, 1985

7. PENALTY PAYMENT DATE= 12, 1986

STANDARD VALUES

8. USEFUL LIFE OF POLLUTION CONTROL EQUIPMENT = 15 YEARS

9. INVESTMENT TAX CREDIT RATE = 10.00 %

10. MARGINAL INCOME TAX RATE = 50.00 %

11. ANNUAL INFLATION RATE= 4.50 %

12. DISCOUNT RATE = 18.69 %

13. AMOUNT OF LOW INTEREST FINANCING = \$ 0

AUGUST 22 1986

A. PRESENT VALUE COST OF PURCHASING THE INITIAL POLLUTION CONTROL EQUIPMENT ON TIME AND OPERATING IT THROUGHOUT ITS USEFUL LIFE	\$	30481
B. PRESENT VALUE COST OF ON-TIME PURCHASE AND OPERATION OF INITIAL POLLUTION CONTROL EQUIPMENT PLUS ALL FUTURE REPLACEMENTS	\$	31051
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-->-->-->--> THE ECONOMIC SAVINGS CALCULATION ABOVE <--<--<--<--<--
USED THE FOLLOWING VARIABLES:

USER SPECIFIED VALUES

1. CASE NAME=	EKCO HOUSEWARES INC.		
2. INITIAL CAPITAL INVESTMENT =		\$	0
3. ONE-TIME NONDEPRECIABLE EXPENDITURE =\$	27200	1981 DOLLARS	
(EXPENSE IS NOT TAX DEDUCTIBLE)			
4. ANNUAL O&M EXPENSE=		\$	1026 1982 DOLLARS
5. FIRST MONTH OF NONCOMPLIANCE=		11,	1981
6. COMPLIANCE DATE=		6,	1985
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11. ANNUAL INFLATION RATE=	4.50 %
12. DISCOUNT RATE =	18.69 %
13. AMOUNT OF LOW INTEREST FINANCING =	\$ 0

— — — — —

USER SPECIFIED VALUES

- | | | | |
|--|----------------------|-------|--------------|
| 1. CASE NAME= | EKCO HOUSEWARES INC. | | |
| 2. INITIAL CAPITAL INVESTMENT = | \$ | | 0 |
| 3. ONE-TIME NONDEPRECIABLE EXPENDITURE =
(TAX DEDUCTIBLE EXPENSE) | \$ | 27200 | 1981 DOLLARS |
| 4. ANNUAL O&M EXPENSE= | \$ | 1026 | 1982 DOLLARS |
| 5. FIRST MONTH OF NONCOMPLIANCE= | | 11, | 1981 |
| 6. COMPLIANCE DATE= | | 6, | 1985 |
| 7. PENALTY PAYMENT DATE= | | 12, | 1986 |

STANDARD VALUES

- | | |
|---|----------|
| 8. USEFUL LIFE OF POLLUTION CONTROL EQUIPMENT = | 15 YEARS |
| 9. INVESTMENT TAX CREDIT RATE = | 10.00 % |
| 10. MARGINAL INCOME TAX RATE = | 50.00 % |
| 11. ANNUAL INFLATION RATE= | 4.50 % |
| 12. DISCOUNT RATE = | 18.69 % |
| 13. AMOUNT OF LOW INTEREST FINANCING = | \$ 0 |

IN DATE

DUNS: 04-520-5424
AMERICAN HOME PRODUCTS CORP
EKO HOUSEWARES CO DIV

BOX 560
MASSILLON OH 44648
359 STATE ST EXT N W
MASSILLON OH 44646
TEL: 216 832-5026

DATE PRINTED
JUL 18 1986

RATING NO

MFG ALUMINUM &
STEEL COOKWARE
SIC NO.
33 61

SPECIAL EVENTS

05/12/86 On May 12 1986 management confirmed that American Home Products Corporation sold its operations at captioned address as of Sep 7 1984 to Ecco Group Inc, Franklin Park, IL.

07-18(212 /4)

012

FULL DISPLAY COMPLETE

FACILITIES: Owns premises in 35 story office building in good condition. Premises neat.

LOCATION: Central business section on main street. Executive office is on the 31st floor.

BRANCHES: Prescription Drug Divisions: Wyeth Laboratories, Ayerst Laboratories, Ives Laboratories, Fort Dodge Laboratories, Corometrics Medical Systems. Packaged Medicines: Whitehall Laboratories, Franklin Laboratories.
Food Product Divisions: American Home Foods, E. J. Brach & Sons.
Household Products & Housewares Divisions: Boyle-Midway, Dupli-Color Products, E-Z Por, The Prestige Group Limited (England).
Maintains numerous branches in cities throughout the United States.

SUBSIDIARIES: Subject corporation has over 230 subsidiaries which are wholly-owned and are engaged in similar activities as their parent. Statements on subsidiaries are not generally provided. Intercompany relations consist of occasional advances by parent to subsidiaries which are retired at the convenience of the management and guarantees as described below.

American Home Products Corporation has submitted a document described as a resolution of guarantee of all wholly-owned domestic subsidiaries together with an opinion of its counsel. This document with opinion does not meet the requirements for rating purposes. Dun & Bradstreet Inc is not in a position to express an opinion as to legal validity of the guarantee. Copies of these documents and list of subsidiaries are available on request from the New York office of Dun & Bradstreet.

07-18(524 /17)

00702

001601

NH

Manufacturers Hanover Trust, 270 Park Ave; Bankers Trust, 280 Park Ave; Citibank, 399 Park Ave; Chemical Bank, 277 Park Ave

FULL DISPLAY COMPLETE

1962 George Washington University Law School, LLB degree. 1962-1966 Steptoe & Johnson, Washington, DC, attorney. 1966-1970 Hoffman-La Roche Inc, group attorney. 1970 to date American Home Products Corporation; 1970 General Counsel; 1972 Vice President-General Counsel; 1974 Vice President; 1977 Senior Vice President; 1981 President-Director.

BLOUNT, born 1938 married. 1960 Babson College, BS degree; CPA. 1960-1973 Arthur Andersen & Co. 1973-1974 Richton International, Vice President-Finance-Director. 1974 to date American Home Products Corporation, Vice President-Finance; May 1983 Senior Vice President-Finance.

HAGAN, born 1923 widowed. 1946 Georgetown University, BS degree. 1943-1946 United States Army, 2nd Lieutenant. 1955-1965 attorney. 1965-1974 Pfizer Inc, Assistant General Counsel. 1974 to date American Home Products Corporation; 1974 Vice President-General Counsel.

EMSWILER born 1944 married. 1966 Holy Cross College, BS degree. 1966-1983 Price, Waterhouse, Partner. 1983 to date American Home Products Corporation, Vice President-Controller.

EMERLING, born 1930 married. 1948-1949 Vassar College; 1949-1950 Case Western Reserve University; 1955 Cleveland State University, LLB degree. 1978 to date American Home Products Corporation, 1978 Secretary.

CONSIDINE born 1950 married. 1972 Villanova University BS degree. 1983 Pace University MBA degree. 1972-1983 Arthur Andersen & Co. 1983-date American Home Products Corporation, 1983 Assistant Vice President, 1985 Comptroller.

Other Vice Presidents are: Joseph R. Bock, industrial relations; Charles D. Canevari, Taxes; George DeMott, Ernest T. Harper, John G. Horsman Jr, Albert R. Pezzillo and Herbert A. Bly.

Other Directors: BERGETHON, President, New England College. BLADES, retired Executive Vice President, American Home Products Corporation. DIEBOLD, President, Double-D Ranch Inc. DUKE, Co-Chairman, Population Crisis Committee/Draper Fund. FROHRING, consulting chemical engineer. GEE, Chairman-CEO, International Paper Co Inc. LAPORTE, former Chairman, American Home Products Corporation.

SARNOFF, former Chairman, RCA Corp. TORELL III, President, Manufacturers Hanover Trust Company. WRIGLEY, President-CEO, William Wrigley Jr Company (Inc).

In 1984 the company completed the sale of its Ekco Houseware Division, subsidiaries, Ekco Canada Inc, E-Z Por Corp, Ekco Products Inc, Dupli-Color and its majority interest in the Prestige Group PLC. The aggregate proceeds on these sales were \$338,200,000 in cash and notes and convertible preferred stock valued at \$10 million.

OPERATION

08/29/85

Directly and through subsidiaries, the company manufactures pharmaceuticals, biological products and medical supplies (54%); food and household products, including canned pastas, soup, beans, chocolate candies, snack foods and mustard; household products, such as cleaners and insecticides (33%); packaged medicines (13%). Terms are primarily 2 10 net 30 days. Has 100,000 accounts. Sells to wholesalers and retailers. Territory :Worldwide. Nonseasonal.

EMPLOYEES: 47,298 including officers. 1,500 employed here.

DUNS: 00-131-7130
AMERICAN HOME PRODUCTS
CORPORATION

685 3RD AVE
AND BRANCH(ES) OR DIVISION(S)
NEW YORK NY 10017
TEL: 212 878-5000

DATE PRINTED
JUL 18 1986

SUMMARY
RATING 5A1

MFR
PHARMACEUTICALS,
BIOLOGICAL PDTS,
MEDICAL SUPPLIES,
FOOD PDTS,
CHOCOLATE CANDY,
CLEANERS, PACKAGED
MEDICINE & OTH PDTS

STARTED 1909
PAYMENTS SEE BELOW
SALES F \$4,684,742,000
WORTH F \$2,098,293,000
EMPLOYS 47,298
(1,500 HERE)
HISTORY CLEAR
CONDITION STRONG
TREND UP

SIC NOS.

28 34 28 31 38 41
20 32 20 66 28 42

CHIEF EXECUTIVE: JOHN W. CULLIGAN, CHB

SPECIAL EVENTS

- 07/01/86 According to a published report dated Jul 1 1986, company announced directors authorized it to buy back five million shares, or 3.3% of the stock outstanding, with a current market value of about \$450 million.
- 06/05/86 According to a published report dated Jun 5 1986, John R. Stafford, President, will assume the added posts of Chairman and Chief Executive Officer Dec 1 1986.
- 04/17/86 According to a published report of Apr 17 1986, company reported sales \$1,264,682,000 and net income \$196,881,000 for the three months ended Mar 31 1986. This compares with sales \$1,207,486,000 and net income \$180,945,000 for the similar year earlier period.
- 02/06/86 According to a published report dated Feb 6 1986 a wholly owned subsidiary of American Home Products Corporation has acquired the consumer products assets of Tico Industrial Co Ltd.
- 01/22/86 According to published information of Jan 22 1986 company reported sales \$4,684,742,000 and net income \$717,140,000 for the fiscal year ended Dec 31 1985.
- 10/18/85 Company reported sales of \$3,530,846,000 and net income of \$533,413,000 for the nine (9) months ended Sep 30, 1985. This compares to sales of \$3,379,738,000 and net income of \$508,214,000 for the nine (9) months ended Sep 30, 1984.

PAYMENTS (Amounts may be rounded to nearest figure in prescribed ranges)						
REPORTED	PAYING	HIGH	NOW	PAST	SELLING	LAST SALE
RECORD		CREDIT	OWES	DUE	TERMS	WITHIN
06/86	Disc	400000	400000	-0-		2-3 Mos
	Disc	80000	30000	-0-		1 Mo

	Disc	50000	-0-	-0-		6-12 Mos
	Disc	7500	5000	-0-	Regular terms	1 Mo
	Disc	2500	-0-	-0-		2-3 Mos
	Disc-Ppt	30000	20000	-0-	N30	1 Mo
	Ppt	700000	400000	-0-		1 Mo
	Ppt	100000	100000	-0-		2-3 Mos
	Ppt	90000	30000	-0-	N30	1 Mo
	Ppt	10000	-0-	-0-	N30	2-3 Mos
	Ppt	1000	-0-	-0-		6-12 Mos
	Ppt	750	-0-	-0-		2-3 Mos
	Ppt	100	-0-	-0-	N30	2-3 Mos
	Ppt	50	50	-0-	N30	1 Mo
	Disc-Slow 5	100000	80000	-0-		1 Mo
	Ppt-Slow 30	5000	-0-	-0-		2-3 Mos
	Ppt-Slow 30	2500	2500	250	N30	1 Mo
	Ppt-Slow 90	2500	1000	1000		2-3 Mos
	Slow 15	250	-0-	-0-	N10	
	Slow 30	40000	10000	10000	N30	
	Slow 30	750	-0-	-0-		6-12 Mos
	Slow 30	50	-0-	-0-	Prox	
	Slow 45	10000	-0-	-0-	1 15 N30	
	Slow 60	5000	500	-0-	N30	1 Mo
	Slow 30-90	2500	-0-	-0-		6-12 Mos
	Slow 30-90	1000	750	750		4-5 Mos
	(027)	7500	50	-0-		2-3 Mos
	(028)	2500	2500	-0-	N30	1 Mo
	(029)	250	-0-	-0-		
05/86	Disc	400000	400000		Regular terms	
	Disc	20000	10000		Regular terms	
	Disc	50	-0-	-0-		
	Ppt	100000	-0-	-0-		4-5 Mos
	Ppt	100000	50000	1000		1 Mo
	Ppt	60000	60000	-0-		1 Mo
	Ppt	20000	20000	-0-	N60	1 Mo
	Ppt	20000	-0-	-0-	N30	2-3 Mos
	Ppt	5000	5000	50	N30	1 Mo
	Ppt	750	-0-	-0-		6-12 Mos
	Ppt	500	500	-0-	N30	1 Mo
	Ppt	250	100	50	N30	
	Ppt-Slow 30	750	750	500	N30	1 Mo
	Ppt-Slow 60	1000		-0-	N30	4-5 Mos
	Ppt-Slow 90	250	-0-	-0-		2-3 Mos
	Slow 30	1000	-0-	-0-		6-12 Mos
	(046)	100000	50000	10000	2 10 N30	1 Mo
	(047)	1000	-0-	-0-		
	(048)	250	250	-0-		1 Mo
04/86	Disc	100000	50000	-0-		1 Mo
	Disc	100000	100000	-0-		1 Mo
	Disc	20000	5000	1000	1 10 N30	1 Mo
	Disc	1000	-0-	-0-		2-3 Mos
	Disc-Ppt	200000	60000	-0-		1 Mo
	Disc-Ppt	1000	1000	-0-		1 Mo

Ppt	200000	60000	-0-	N30	6-12 Mos
Ppt	100000	50000	-0-		1 Mo
Ppt	100000	70000	-0-		1 Mo
Ppt	30000	30000	-0-		1 Mo
Ppt	20000	-0-	-0-		1 Mo
Ppt	15000	15000		N30	
Ppt	2500	-0-	-0-	N30	4-5 Mos
Ppt	1000	-0-	-0-	N30	1 Mo
Ppt	750	750	-0-		1 Mo
Ppt	500	-0-	-0-		6-12 Mos
Ppt	500	500	-0-	N30	1 Mo
Ppt	50	50	-0-		1 Mo
Disc-Slow 15	100000	15000	-0-		1 Mo
Ppt-Slow 30	50000	40000	2500		1 Mo
Ppt-Slow 30	40000	7500	-0-		1 Mo
Ppt-Slow 30	2500	750	-0-	N30	1 Mo
Ppt-Slow 60	100000	70000	-0-		1 Mo
Ppt-Slow 110	2500	500	250	N10	1 Mo
Ppt-Slow 120	7500	7500	2500	N30	1 Mo
Slow 15	100000	100000	-0-	N30	1 Mo
Slow 60	40000	40000	30000		1 Mo
(076)	100000	20000	-0-		1 Mo
(077)	15000	15000	15000		1 Mo
(078)	2500				2-3 Mos
(079)	1000	-0-	-0-		
(080)	100	100	100	N30	

Payment experiences reflect how bills are met in relation to the terms granted. In some instances payment beyond terms can be the result of disputes over merchandise, skipped invoices etc.

UPDATE

05/27/86

Interim consolidated (unaudited) statement of Mar 31 1986 is summarized as follows: current assets \$2,455,487,000; current liabilities \$760,467,000; net worth (computed after deduction of intangibles totaling \$210,648,000) \$2,179,499,000.

STATEMENT UPDATE

04/09/86 IN THE INTEREST OF SPEED, SUPPLEMENTAL FINANCIAL STATEMENTS ARE ISSUED AS RECEIVED WITHOUT REVIEW. THE FIGURES WILL BE REVIEWED AGAINST THE RATING AT A SUBSEQUENT DATE.

Fiscal Consolidated statement dated DEC 31 1985:

Cash	\$ 915,021,000	Accts Pay	\$ 526,187,000
Accts Rec	695,270,000	Bank Loans	8,229,000
Inventory	575,504,000	Taxes	50,631,000
Deferred Taxes &		Deferred Taxes	76,855,000
Other	89,767,000		
-----		-----	
Curr Assets	2,275,562,000	Curr Liabs	661,902,000
Fixt & Equip	859,414,000	Deferred	
Intangibles	193,465,000	Compensation	63,322,000
Investments-Other	30,471,000	Deferred Taxes	46,142,000
Other Assets	36,299,000	L.T. Liab-Other	332,087,000
		PREFERRED STOCK	246,000
		COMMON STOCK	50,296,000
		ADDIT. PD.-IN CAP	245,352,000
		RETAINED EARNINGS	2,091,438,000

had increased operating income and the third operating segment, packaged medicines 1984 operating profit was \$142,000,000 compared to \$151,400,000 operating profit in 1983. Tangible net worth increased primarily as the result of retained earnings after payment of dividends and reduced intangibles offset by reduction of capital stock outstanding from company's repurchase of a portion of its capital stock and increase in foreign currency translation adjustment. Increase in the net working capital was primarily due to retained earnings.

The Dec 31 1984 balance disclosed a strong financial condition with total liabilities well in line with tangible equity and fully supported by the aggregate of cash and receivables alone. The only bank borrowing utilized is short-term unsecured loans by foreign subsidiaries.

The company reported sales \$2,320,530,000 and net income \$342,992,000 for the six months ended Jun 30 1985 compared to sales \$2,211,853,000 and net income \$331,118,000 for a like period in 1984.

Unaudited consolidated balance sheet of Jun 30 1985 showed total current assets \$2,108,387,000, total current liabilities \$577,512,000 and other non-current liabilities \$338,004,000. A continued strong financial condition was shown.

BANKING

01/86 Account(s) averages high 5 figures.
08/85 Account(s) averages low 6 figures. Account open over 10 years.
Account satisfactory. Non borrowing account.
08/85 Account(s) averages high 6 figures. Account open over 10 years.
Account satisfactory. Non borrowing account.

HISTORY

08/29/85

JOHN W. CULLIGAN, CHB+
ROBERT G. BLOUNT, SR V PRES-
FINANCE

JOHN R. STAFFORD, PRES+
CHARLES F. HAGAN, V PRES-GEN
COUNSEL

WILLIAM F. EMSWILER, V PRES-TREAS
JOHN R. CONSIDINE, COMPTROLLER

DIRECTOR(S): The officers identified by (+) and K. Ronald Bergethon, Herbert W. Blades, A. Richard Diebold, Robin Chandler Duke, Paul R. Frohring, Edwin A. Gee, William F. Laporte, Robert W. Sarnoff, John R. Torell III and William Wrigley.

Incorporated Delaware Feb 4 1926. Authorized capital consists of 210,000,000 shares common stock, \$.33 1/3 par value and 5,000,000 shares preferred stock, \$2.50 par value.

Company formed to acquire Wyeth Chemical Co (Inc) and its affiliates which started in 1909.

Paid in capital \$50,947,000 on Dec 31 1984. The capital stock is listed on the New York Stock Exchange. At Dec 31 1984 there were 79,541 common and 1,975 preferred stockholders.

Business started 1909. 99% of the capital stock is owned by the public. 1% of the capital stock is owned by the officers and directors.

CULLIGAN, born 1916 married. Attended Seton Hall College. 1943-1946 United States Army. 1937 to date American Home Products Corporation; 1964 President, Whitehall Labs Division; 1968 Corporate Vice President; 1972 Executive Vice President, Director; 1973 President-Director; 1981 Chairman-Chief Executive Officer.

STAFFORD, born 1937 married. 1959 Dickinson College, AB degree;

Annual sales \$4,485,470,000; cost of goods sold \$1,799,537,000. Gross profit \$2,685,933,000; operating expenses \$1,594,404,000. Operating income \$1,091,529,000; other income \$82,936,000; net income before taxes \$1,174,465,000; Federal income tax \$518,637,000; Businesses sold \$76,254,000. Reserves-for foreign investment \$(50,000,000). Net income \$682,082,000. Retained earnings at start \$1,933,968,000. Net income \$682,082,000; dividends \$406,418,000; other deductions \$249,909,000; retained earnings at end \$1,959,723,000.

Statement obtained from annual report. Prepared from statement(s) by Accountant: Arthur Andersen & Co.

ACCOUNTANTS OPINION: "A review of the accountant's opinion indicates that the audit meets generally accepted accounting principles and contains no qualifications".

--0--

Item worth shown in summary section was computed after deduction of intangibles, goodwill \$139,694,000, patents and trademarks \$43,157,000, totaling \$182,851,000. Accounts receivable shown net less \$20,070,000 allowance. Fixed assets shown net less \$465,637,000 depreciation. Above 1982 and 1983 summaries restated to conform with 1984 financial statements.

\$281,437,000 of inventory valued at the lower of cost or market using the LIFO method; balance is on the FIFO method. Investments are shown at cost; market value was \$20,219,000. Bank loans are unsecured borrowings by foreign subsidiaries.

Other long-term liabilities consist of provisions for loss contingencies relating to taxes, general and product liability and worker's compensation claims, provisions for severance payments to foreign employees, foreign income taxes payable after one year.

Item also includes \$40,000,000 of privately placed adjustable rate industrial revenue bonds 1983 Series A due Dec 1 2018. The effective annual interest rate on the bonds is 8.21% per annum through Nov 30 1988 after which date the rate will be reset annually unless the company elects to establish a fixed rate to be paid for the remaining term of the bonds.

CONTINGENCIES:

The company reported that it has no material pending legal proceedings other than routine litigation incidental to its business. The company is on occasion, contingently liable as guarantor of subsidiary obligations.

Item reserves for foreign investment of \$50,000,000 is a charge recorded by company in the fourth quarter recognizing the impairment of its investment in its subsidiaries in South America except for its investment in Brazil.

The provisions was made after determining that the continued imposition of constraints such as dividend restrictions, exchange controls, price controls and import restrictions in these countries so severely impede management's control of the economic performance of the businesses that continued inclusion of these subsidiaries in the consolidated financial statements is inappropriate.

Other deductions in retained earnings of \$249,909,000 for the cost of treasury stock acquired, less amounts charged to capital.

For the year ended Dec 31 1984 sales increased 5% and net income increased 9% over the prior year. The two major operating segments

CURRENCY
ADJUSTMENT

(95,574,000)

 Total Assets 3,395,211,000 Total 3,395,211,000
 Annual sales \$4,684,742,000; cost of goods sold \$1,837,119,000.
 Operating expenses \$1,695,963,000. Other income \$59,578,000; net
 income before taxes \$1,211,238,000; Federal income tax \$494,098,000;
 net income \$717,140,000. Retained earnings at start \$1,959,723,000.
 Net income \$717,140,000; dividends \$441,866,000; other deductions
 \$143,559,000; retained earnings at end \$2,091,438,000.

Prepared from statement(s) by Accountant: Arthur Andersen & Co.
 ACCOUNTANTS OPINION: "A review of the accountant's opinion
 indicates that the audit meets generally accepted accounting
 principles and contains no qualifications".

--0--

Item worth shown in summary section was computed after deduction
 of intangibles, goodwill, trademarks, formulae and sales rights,
 totaling \$193,465,000. Accounts receivable shown net less \$21,737,000
 allowance. Fixed assets shown net less \$547,504,000 depreciation.

FINANCE

- * A FINANCIAL SPREAD SHEET OF COMPARATIVES, RATIOS, AND INDUSTRY AVERAGES *
- * MAY BE AVAILABLE. ORDER A DUNS FINANCIAL PROFILE VIA YOUR DUNSPRINT *
- * TERMINAL OR LOCAL D&B OFFICE *

08/29/85

	Fiscal Consolidated Dec 31 1982	Fiscal Consolidated Dec 31 1983	Fiscal Consolidated Dec 31 1984
Curr Assets	1,796,549,000	1,940,206,000	2,028,142,000
Curr Liabs	660,317,000	582,275,000	588,429,000
Current Ratio	2.72	3.33	3.45
Working Capital	1,136,232,000	1,357,931,000	1,439,713,000
Other Assets	805,797,000	841,523,000	821,590,000
Worth	1,614,192,000	1,855,028,000	1,905,733,000
Sales	4,582,096,000	4,273,299,000	4,485,470,000
Net Income	560,103,000	627,233,000	682,082,000
Fiscal Consolidated statement dated DEC 31 1984:			
Cash	\$ 767,980,000	Accts Pay	\$ 526,825,000
Accts Rec	641,147,000	Bank Loans	9,885,000
Inventory	529,391,000	Taxes	51,719,000
Deferred Taxes	89,624,000		
Curr Assets	2,028,142,000	Curr Liabs	588,429,000
Fixt & Equip	769,623,000	Deferred	
Investments	17,464,000	Compensation	70,526,000
Intangibles	182,851,000	L.T. Liab-Other	285,044,000
Deferred Taxes	34,503,000	PREFERRED STOCK	280,000
		COMMON STOCK	50,667,000
		ADDIT. PD.-IN CAP	187,338,000
		RETAINED EARNINGS	1,959,723,000
		CURRENCY	
		ADJUSTMENT	(109,424,000)
Total Assets	3,032,583,000	Total	3,032,583,000

THE ECONOMIC BENEFIT OF A 43 MONTH DELAY
AS OF THE PENALTY PAYMENT DATE, 57 MONTHS
AFTER THE INITIAL DATE OF NONCOMPLIANCE

\$ 17051
=====

->->->-> THE ECONOMIC SAVINGS CALCULATION ABOVE <-<-<-<-<-
USED THE FOLLOWING VARIABLES:

USER SPECIFIED VALUES

1. CASE NAME= EKCO HOUSEWARES INC.
2. INITIAL CAPITAL INVESTMENT = \$ 27200 1981 DOLLARS
3. ONE-TIME NONDEPRECIABLE EXPENDITURE = \$ 0 ← \$27,200
4. ANNUAL O&M EXPENSE= \$ 1026 1982 DOLLARS
5. FIRST MONTH OF NONCOMPLIANCE= 11, 1981
6. COMPLIANCE DATE= 6, 1985
7. PENALTY PAYMENT DATE= 8, 1986

STANDARD VALUES

8. USEFUL LIFE OF POLLUTION CONTROL EQUIPMENT = 15 YEARS
9. INVESTMENT TAX CREDIT RATE = 10.00 %
10. MARGINAL INCOME TAX RATE = 50.00 %
11. ANNUAL INFLATION RATE= 4.50 %
12. DISCOUNT RATE = 18.69 %
13. AMOUNT OF LOW INTEREST FINANCING = \$ 0

DO YOU WISH TO DO ANOTHER ECONOMIC SAVINGS CALCULATION?
(0=NO; 1=YES, USING STANDARD VALUES; 2=YES, USING OWN INPUTS)

?

is ready to provide output.

You have 4 choices:

1. Print only the economic benefit of delayed compliance. This is the most commonly used option. No intermediate calculations are printed.
2. Print the economic benefit of delayed compliance plus the present values of delayed and on time cash flows.
3. Print Option 2 plus a table of annual cash flows for the life of the initial pollution control equipment. (This table may be useful to financial analysts in understanding program calculations. It is not recommended for someone unfamiliar with financial concepts, however.)
4. Do not print results. (Use this option if a data entry error is discovered.)

CHOOSE OUTPUT OPTION 1, 2, 3, OR 4.

?

POSITION PAPER ON BOTTOM LINE OF THIS PAGE,
THEN PRESS CARRIAGE RETURN

EXCO HOUSEWARES INC.

AUGUST 21, 1986

2. INITIAL CAPITAL INVESTMENT IN POLLUTION CONTROL =
(FOLLOW WITH YEAR-DOLLARS SEPARATED BY BLANK; e.g., 100000 1984)
(ENTER 0 IF THIS COST CATEGORY IS NOT APPLICABLE)

3. ONE-TIME NONDEPRECIABLE EXPENDITURE =
(FOLLOW WITH YEAR-DOLLARS SEPARATED BY BLANK; e.g., 100000 1984)
(ENTER 0 IF THIS COST CATEGORY IS NOT APPLICABLE)

4. ANNUAL O&M EXPENSE =
(FOLLOW WITH YEAR-DOLLARS SEPARATED BY BLANK; e.g., 100000 1984)
(ENTER 0 IF THIS COST CATEGORY IS NOT APPLICABLE)

5. MONTH AND YEAR WHEN NONCOMPLIANCE BEGAN (e.g., 1,1985)

6. MONTH AND YEAR WHEN COMPLIANCE ACHIEVED (e.g., 6,1985)

7. MONTH AND YEAR WHEN PENALTY PAID (e.g., 8,1985)

ERROR: THE MONTH ENTRY 0 IS INCORRECT.
ENTER A NUMBER FROM 1 TO 12.

7. MONTH AND YEAR WHEN PENALTY PAID (e.g., 8,1985)

YOU HAVE ENTERED THE FOLLOWING: 0

ERROR: MONTH SHOULD BE SEPARATED FROM YEAR
BY A COMMA (e.g., 6,1985).
ENTER AGAIN.

7. MONTH AND YEAR WHEN PENALTY PAID (e.g., 8,1985)

BEN will use this information to estimate the economic benefit. If you select standard values for the remaining six variables, these standard values will be printed in your output. You also have the option of entering your own values for the remaining variables.

HOW DO YOU WISH TO TREAT REMAINING VARIABLES?
(1=USE STANDARD VALUES, 2=ENTER OWN VALUES)

AUGUST 22 1986

A.	PRESENT VALUE COST OF PURCHASING THE INITIAL POLLUTION CONTROL EQUIPMENT ON TIME AND OPERATING IT THROUGHOUT ITS USEFUL LIFE	\$	30481
B.	PRESENT VALUE COST OF ON-TIME PURCHASE AND OPERATION OF INITIAL POLLUTION CONTROL EQUIPMENT PLUS ALL FUTURE REPLACEMENTS	\$	31051
C.	PRESENT VALUE COST OF DELAYED PURCHASE AND OPERATION OF POLLUTION CONTROL EQUIPMENT PLUS ALL FUTURE REPLACEMENTS	\$	19676
D.	ECONOMIC BENEFIT OF A 43 MONTH DELAY AS OF INITIAL DATE OF NONCOMPLIANCE (EQUALS B MINUS C)	\$	11376
E.	THE ECONOMIC BENEFIT OF A 43 MONTH DELAY AS OF THE PENALTY PAYMENT DATE, 61 MONTHS AFTER THE INITIAL DATE OF NONCOMPLIANCE	\$	27180 =====

->->->->-> THE ECONOMIC SAVINGS CALCULATION ABOVE <-<-<-<-<-<-
USED THE FOLLOWING VARIABLES:

USER SPECIFIED VALUES

1.	CASE NAME=	EKCO HOUSEWARES INC.	
2.	INITIAL CAPITAL INVESTMENT =	\$	0
3.	ONE-TIME NONDEPRECIABLE EXPENDITURE =\$	27200	1981 DOLLARS
	(EXPENSE IS NOT TAX DEDUCTIBLE)		
4.	ANNUAL O&M EXPENSE=	\$	1026 1982 DOLLARS
5.	FIRST MONTH OF NONCOMPLIANCE=		11, 1981
6.	COMPLIANCE DATE=		6, 1985
7.	PENALTY PAYMENT DATE=		12, 1986

STANDARD VALUES

8.	USEFUL LIFE OF POLLUTION CONTROL EQUIPMENT =		15 YEARS
9.	INVESTMENT TAX CREDIT RATE =		10.00 %
10.	MARGINAL INCOME TAX RATE =		50.00 %
11.	ANNUAL INFLATION RATE=		4.50 %
12.	DISCOUNT RATE =		18.69 %
13.	AMOUNT OF LOW INTEREST FINANCING =	\$	0

Ekco acknowledges that significantly higher penalties have been imposed in RCRA cases,⁹ but contends that these cases are inapposite because the violations involved conduct that actively caused environmental harm.¹⁰ In contrast, argues Ekco, its violations merely involved a failure to provide the EPA with financial documentation. Ekco's assessment of the relative seriousness of a violation of the financial responsibility regulations is questionable. These regulations are not mere paperwork requirements, and a party cannot comply by submitting a financial statement or other indicators of its net worth. The purpose of these regulations is to ensure that adequate funds are secured (through, e.g., a letter of credit, guarantee or liability policy) in the present to meet the future financial needs for closing a hazardous waste site and satisfying any third-party claims that might arise therefrom. A present violation of these regulations may significantly impair the ability to close and remediate the site when needed and to protect third parties from harm. This risk of future harm

⁹ E.g., *United States v. Production Plated Plastics, Inc.*, No. 93-2055, 1995 U.S. App. LEXIS 20539 (6th Cir. July 19, 1995) (affirming \$1.5 million penalty, which amounted to \$400 per day); *United States v. Adlvest Suspension and Brake*, 49 F.3d 1197 (6th Cir. 1995) (affirming \$50,000 penalty, which amounted to \$2500 per day); *United States v. Bethlehem Steel Corp.*, 829 F. Supp. 1047, 1057 (N.D. Ind. 1993) (\$4.2 million; court refused to impose per diem amount, but penalty equalled roughly \$1500 per day); *United States EPA v. Environmental Waste Control, Inc.*, 710 F. Supp. 1172 (N.D. Ill. 1989) (\$2.778 million penalty, which amounted to \$2000 per day), *aff'd*, 917 F.2d 327 (7th Cir. 1990), *cert. denied*, 499 U.S. 975 (1991); *United States v. T & S Brass and Bronze Works, Inc.*, 681 F. Supp. 314 (D.S.C.) (\$194,000 penalty, which amounted to \$1000 per day), *aff'd in part and vacated in part on other grounds*, 865 F.2d 1261 (4th Cir. 1988) (Table).

¹⁰ Ekco's characterization of the violations involved in prior cases is not altogether accurate. See *Bethlehem Steel Corp.*, 829 F. Supp. at 1057 (\$4.2 million penalty for failure to timely submit preliminary assessment plan, remedial investigation report, and corrective action plan, as required by underground injection well permits).

posed by a hazardous waste facility such as that owned by Ekco, found by the district court to present serious risks to human health and the environment,¹¹ is no less important a consideration than the risk of present harm caused by activities causing contamination. Thus, we are not persuaded that the district court imposed a penalty disproportionate to other RCRA penalties, and find no abuse of discretion.

We REVERSE the imposition of civil penalties pertaining to 40 C.F.R. § 265.143, for the period June 25, 1990 to September 20, 1992; 40 C.F.R. § 265.145, for the period June 25, 1990 to July 28, 1992; and 40 C.F.R. § 265.147, for the period from September 29, 1992 to March 11, 1993. We REMAND to the district court for a redetermination of penalties for these time periods. In all other respects we AFFIRM.

¹¹The district court's extensive findings regarding the risks posed by the cadmium, chromium, lead, TCA, TOE and vinyl chloride contaminating the Massillon facility are reported at *Ekco Housewares, Inc.*, 853 F. Supp. at 983-86. Ekco does not dispute the accuracy of these findings.

621

Ohio EPA

Re: Ekco Houseware Company

Stark County
OHD 043-205-424
Generator

RECEIVED

CRB

Mr. Leo Haun
Ekco Houseware Company
359 State Avenue Extension N.W.
Massillon, Ohio 44646

August 1, 1984

Dear Mr. Haun:

On July 20, 1984, I conducted an inspection of the Ekco Houseware Company facility located at 359 State Avenue Extension, N.W., Massillon, Ohio, to determine compliance of this facility with regards to the Ohio Hazardous Waste regulations. You, Mr. Thomas Shingleton, and Mr. Thomas Epps represented Ekco during this inspection.

The following violations were noted during this inspection:

1. Containers of hazardous waste stored on-site for 90 days or less without a RCRA storage permit must be clearly marked with the words "Hazardous Waste" and the date of accumulation (Ohio Administrative Code (OAC) 3745-52-34).
2. A generator must provide a Personnel Training Program (OAC 3745-52-32; OAC 3745-65-16) including:
 - a. A written description of the type and amount of both introductory and continuing training that will be given to personnel who handle hazardous waste at the facility.
 - b. Records that document completion of required training by facility personnel.
 - c. Job titles and descriptions for each hazardous waste management position at your facility, and the names of the employees filling these positions.
3. A Contingency Plan containing information described in OAC 3745-65-50 through 3745-65-56 must be prepared for this facility (OAC 3745-52-34).
4. Each area where containers are stored must be inspected weekly for evidence of leaks or corrosion (OAC 3745-52-34; OAC 3745-66-74). Inspections must be recorded in an inspection log which includes the date of inspection, the name of the inspector, and a space to acknowledge remedial actions.

CC TOM SHINGLETON

JIM EPPS - 8-2-84

Plaintiff's
Shingleton 8/2/84
EX 1
8-2-84 JWB

August 1, 1984

During this inspection we briefly discussed the topic of the contaminated ground water aquifer discovered by Ekco. The contamination was found as a result of required VOC analysis of your facility's non-contact cooling water NPDES discharge to Newman Creek. This analysis showed that a number of volatile organic compounds including 1,1,1 trichloroethane and trichloroethylene have been introduced to the ground water aquifer from an unknown source or sources.

Because of these findings, we have requested a meeting with Ekco, scheduled for 9:00 a.m., August 10, 1984 at the OEPA, Northeast District Office, 2110 East Aurora Road, Twinsburg, Ohio, to discuss:

1. Possible sources of ground water contamination.
2. The potential for further testing and monitoring of local ground water to determine the exact source of contamination.
3. Possible remedial actions.


Three possible sources of contamination have been identified from further testing conducted by Ekco. These areas include the two product tank farms and the surface lagoon, which are all located at the Ekco facility. From our discussion during the inspection, it is my understanding that Ekco has used either 1,1, 1 trichloroethane or trichloroethylene in degreasing operations for at least the past 20 years. It is also my understanding that solvent contaminated water generated primarily from condensation within the degreaser units has been physically segregated and discharged via storm sewers to the on-site surface lagoon for a period of time dating back to at least 1979. Pending clarification by this Agency, this surface lagoon may be considered a hazardous waste surface impoundment because of the discharge of listed hazardous waste to the lagoon and the subsequent storage of this hazardous waste within the lagoon.

With exception to the material that will be discussed during our August 10, 1984 meeting, please submit to my attention within sixty (60) days from the date of this letter documentation to verify compliance with the second and third violations noted above. Once this material has been reviewed, a reinspection will be scheduled to verify compliance of this facility with the remaining violations.

A copy of this inspection report is enclosed for your information. This report will become a part of the official records of the Ohio Environmental Protection Agency's Division of Solid and Hazardous Waste Management.

Please feel free to contact me at (216) 425-9171 if you have any questions.

Yours truly,



Rodney Beals
Environmental Scientist
Division of Solid and Hazardous Waste Management
Northeast District Office

RB:kr

Enc.

cc: P. Cotter, DSEWM, C.O.
D. Hasbrouck, OEPA, NEDO
W. Skowronski, OEPA, NEDO
D. Lee/B. Miller, OEPA, NEDO
D. Underwood, OEPA, NEDO
E. Mohr, OEPA, NEDO

No. 94-3268

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

UNITED STATES OF AMERICA,
Plaintiff-Appellee.

v.

EKCO HOUSEWARES, INC.,
Defendant-Appellant.

ON APPEAL from the
United States District
Court for the Northern
District of Ohio

Decided and Filed August 16, 1995

Before: MARTIN and JONES, Circuit Judges; JOINER,
District Judge.

JOINER, District Judge. Defendant, Ekco Housewares,
Inc., appeals a \$4,606,000 civil penalty imposed under the
Resource Conservation Recovery Act, 42 U.S.C. §§ 6901-
6987. The district court found that Ekco had violated

* The Honorable Charles W. Joiner, United States District Court
for the Eastern District of Michigan, sitting by designation.

federal regulations and a consent order in failing to provide documentation of its financial responsibility pending closure of a hazardous waste site. The court assessed a fine of \$1000 per day for each of the violations. On appeal, Ekco challenges its liability under one of the regulations and the corresponding consent order obligation, and otherwise contends that the district court abused its discretion in imposing so large a penalty, and in not taking certain mitigating factors into account.

We affirm in part, reverse in part, and remand for further proceedings.

I.

A.

Resource Conservation and Recovery Act and Regulations

The Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901-6987 is a comprehensive statute governing the generation, transportation, storage, and treatment of hazardous wastes so as to "minimize the present and future threat to human health and the environment." 42 U.S.C. § 6902(b). The RCRA prohibits the operation of any hazardous waste management facility, except as authorized with a permit. 42 U.S.C. § 6925(a). Recognizing that the Environmental Protection Agency could not issue permits to all applicants before November 19, 1980, the RCRA's effective date, Congress provided that a facility could obtain "interim status" to allow it to operate pending final administrative action on its permit application. *Northside Sanitary Landfill, Inc. v. Thomas*, 804 F.2d 371, 373-74 (7th Cir. 1986). A facility could obtain interim status if it notified the EPA of its activities involving hazardous wastes, and submitted a Part A permit application. *Id.*; 42 U.S.C. §§ 6925(c)(1), 6930(a).

Facilities that obtained interim status, as well as those that did not, were required to comply with certain operating standards promulgated by EPA. 40 C.F.R.

§ 265.1(b). At issue in this case are three "financial requirements" set forth in 40 C.F.R., Part 265, subpart H, §§ 265.140-150, specifically: (1) § 265.143, entitled "Financial assurance for closure," which requires owners and operators of treatment, storage, and disposal (TSD) facilities to demonstrate that they have sufficient assets in place and available in a specified manner to provide for appropriate closure of the facilities; (2) § 265.145, entitled "Financial assurance for post-closure care," which requires a similar showing for post-closure care of the facilities; and (3) § 265.147, entitled "Liability requirements," which requires owners and operators to demonstrate financial responsibility for third-party bodily injury or property damage claims arising from operations at the facilities.

The EPA may authorize a state to administer and enforce a hazardous waste management program. The state of Ohio obtained such authorization, and its RCRA program is managed by the Ohio Environmental Protection Agency (Ohio EPA). The United States retains concurrent authority to enforce the applicable RCRA provisions. 42 U.S.C. § 6928. Ohio has adopted financial requirements substantially identical to the federal regulations.

Ekco's Massillon Facility; American Home Products Corporation

Ekco has a facility in Massillon, Ohio, where it manufactures various household products. From the 1950s until 1978, Ekco discharged liquid wastes containing lead and cadmium-bearing sludge into an unlined surface impoundment at the facility. In 1980, Ekco began discharging another kind of waste into the impoundment, noncontact cooling water which had been pumped from a well on the site and circulated through pipes outside degreasers as a cooling step in the manufacturing process. In 1984, Ekco discovered the existence of trichloroethylene and trichloroethane (TCE and TCA) in the groundwater beneath the plant. Ekco's investigation revealed that a well at the site was the source of the contamination, and that the discharged cooling water in the surface impoundment also

contained TCE and TCA. Ekco stopped discharging into the impoundment in June 1984 and never resumed.

In September 1984, shortly after the contamination was discovered, Ekco's corporate parent, American Home Products Corporation (AHP), sold Ekco to The Ekco Group, Inc. Pursuant to the purchase agreement, AHP agreed to indemnify and hold Ekco harmless from certain environmental liability, including liability associated with the surface impoundment at the Massillon facility and the costs of remediation and closure of the impoundment. The parties stipulated that AHP always had sufficient funds to pay for closure and post-closure care of the impoundment and third-party injury or property damage claims. AHP's indemnity obligation did not extend, however, to claims which "may have been exacerbated by actions other than by AHP and its agents" which occurred after the sale. Ekco agreed to pay that portion of such claims, and both parties reserved the right to file suit regarding their respective obligations.

Administrative Complaint and Consent Order

Pursuant to 42 U.S.C. § 6930, Ekco notified the EPA in 1980 that the Massillon facility was generating hazardous wastes, but did not inform the EPA that the Massillon facility was treating, storing, or disposing of hazardous wastes, and did not submit the Part A application required to obtain interim status for that facility. In November 1986, the EPA filed an administrative complaint against Ekco, alleging that Ekco stored hazardous wastes at the Massillon facility without a permit or interim status, and failed to comply with the financial requirements of 40 C.F.R. §§ 265.140-150. Ekco and the EPA entered into a partial consent order one year later that required Ekco to submit a closure plan for the facility within 90 days and, at the same time, to "[c]omply with the financial responsibility requirements for closure until closure has been certified, pursuant to 40 CFR 265.140 through 265.151[.]" The order provided that failure to comply with any of its provisions would subject Ekco to civil penalties

under the RCRA. The parties entered into a second consent agreement by which Ekco agreed to pay an administrative penalty of \$55,478 for its violations.

Eventual Closure of the Impoundment and Compliance with Financial Requirements

Ekco's initial closure plan, submitted on August 12, 1988, called for retention of the hazardous waste on the site through stabilizing and solidifying the waste so that it would not escape from the impoundment. Ohio EPA rejected the plan several months later, but invited Ekco to conduct tests to determine if the stabilization proposal would work. Ekco subsequently conducted a treatability study and other tests. Eventually, in July 1992, Ekco submitted a "clean closure" plan, one that contemplated the removal of all hazardous waste from the site. The clean closure plan was approved in 1993.

This case does not directly concern the contamination and closure of the Massillon surface impoundment but, rather, Ekco's lengthy delay in complying with its obligations to document that it had secured financial resources for the impoundment's closure and post-closure care, and to satisfy third-party claims arising out of the contamination. The record reflects that Ekco repeatedly was notified that it was in violation of the applicable regulations and consent order. Ekco was so notified in March 1988, but did not comply. In August 1988, Ekco submitted its initial closure plan, but did not comply with the financial responsibility requirements at that time, as required by the consent order. In September 1989, the Ohio EPA again notified Ekco that it was in violation of the regulations and the consent order. The notice referred to the fact that Ekco's initial closure plan had been disapproved, and stated that Ekco's closure "estimates must be revised . . . before [Ekco] establishes a financial assurance mechanism(s) for closure and post-closure care[.]" One week later, an Ohio EPA representative told Ekco's attorney that Ekco's financial responsibility obligations were not contingent on submittal or approval of a revised closure plan. Still Ekco did not

comply. In March 1990, Ohio EPA sent Ekco another notice of violation.

Ekco ultimately decided to satisfy its obligation to establish financial assurances for closure and post-closure care through submitting a letter of credit, as permitted by 40 C.F.R. § 265.143(c), and, AHP submitted a \$ 1.5 million letter of credit to Ohio EPA on June 25, 1990. The letter of credit substantially complied with the applicable regulation's requirements, § 264.151(d), but had several defects which were brought to Ekco's attention in October 1990.¹ Plaintiff presents no evidence or claim that the letter of credit was not valid and negotiable as originally submitted. Ekco submitted documentation to correct some of the defects in November 1990, and corrected the remaining problems in September 1992. Ohio EPA later notified Ekco that the financial assurance for closure violation was deemed abated as of September 1992, and that Ekco was no longer required to provide financial assurance for post-closure care in light of its submittal of a clean closure plan.

Ekco's efforts to timely demonstrate financial responsibility for third-party claims were less impressive. In April 1990, Ekco's attorney sent Ohio EPA a copy of Ekco's general liability policy, aware that it contained pollution exclusions. Ohio EPA advised that the policy was insufficient in May 1990. In June 1990, Ekco requested a variance from the liability coverage requirement, but, later that month, requested Ohio EPA not to act on the request. No further action was taken until September 29, 1992, when Ekco submitted AHP's guarantee, by which AHP obligated itself to satisfy Ekco's

¹ Ekco neglected to forward a duplicate original of the stand-by trust agreement. Additionally, the letter of credit was issued to AHP, not Ekco, and did not name Ekco or state that it was for Ekco's benefit. Finally, the letter of credit was not accompanied by a letter setting forth Ekco's address and identification number, and the fact that Ekco was relying on the letter of credit.

third-party liability. Ohio EPA found the guarantee defective because it had an effective date of September 1, 1988. Ohio EPA apparently inferred that Ekco backdated the guarantee to absolve itself of liability for its lengthy delay in submitting proof of liability coverage, and required that the effective date be made contemporaneous with the date of issue. Ekco made the requested change on March 11, 1993.

B.

The United States filed suit against Ekco in June 1992, prior to Ekco's final abatement of its violations. The complaint alleged that Ekco violated both the regulations and the 1987 consent order in failing to comply with the financial responsibility requirements, and sought injunctive relief and administrative penalties in amounts up to \$25,000 per day for each violation, as permitted by 42 U.S.C. § 6928. Ruling on the parties' cross-motions for summary judgment, the district court held that the consent order obligated Ekco to establish financial assurance for closure and post-closure care and to demonstrate financial responsibility for third-party claims, and that Ekco had an independent obligation under 40 C.F.R. § 265.143 to establish financial assurance for closure. The court reserved the questions whether Ekco was bound to establish financial assurance for post-closure care and to demonstrate responsibility for third-party claims under §§ 265.145 and 265.147, respectively, and decided those issues adversely to Ekco following trial.

The court thus concluded that Ekco violated both the consent order and the regulations in not complying with all three financial responsibility requirements, and calculated the number of days on which Ekco was in violation, starting with August 15, 1988, the date on which the consent order first required submission of financial responsibility documentation. The court stopped the clock:

(1) with respect to Ekco's obligation to establish financial assurance for closure (§ 265.143), on September 20, 1992, the day before Ohio EPA

received the final documentation to cure technical defects in the letter of credit (1486 days);

(2) with respect to the obligation to establish financial assurance for post-closure care (§ 265.145), on or about July 28, 1992, when Ekco submitted a plan for clean closure (1445 days); and

(3) with respect to the obligation to demonstrate financial responsibility for third-party claims (§ 265.147), on March 11, 1993, the date on which Ekco resubmitted AHP's guarantee bearing a 1992 rather than a 1988 effective date (1675 days).

The court assessed a penalty of \$1000 per day for each day on which Ekco was in violation, for a total of \$4,606,000. *United States v. Ekco Housewares, Inc.*, 853 F. Supp. 975 (N.D. Ohio 1994).

II. Liability for Violating Obligations to Establish Financial Assurances for Closure and Post-Closure Care

Ekco does not challenge the district court's holding that it violated both the consent order and the regulations, §§ 265.143 and 265.145, in failing to comply with its obligations to establish financial assurances for closure and post-closure care. Thus, the only question raised on appeal as to these two requirements is the reasonableness of the penalty imposed, discussed in Part IV.

III. Liability for Violating Obligation to Demonstrate Financial Responsibility for Third-Party Claims

The district court found that Ekco's obligation to demonstrate financial responsibility for third-party claims arose from two independent sources: the consent order, by which Ekco unambiguously agreed to comply with 40 C.F.R. § 265.147; and § 265.147 itself. Ekco challenges both bases for the district court's holding. Our affirmance on either ground is sufficient to affirm the district court's finding that Ekco was in violation of an obligation, and

thus subject to civil penalties. We review the district court's holdings de novo.

A. 40 C.F.R. § 265.147

At first blush, it is difficult to conceive of a basis on which Ekco could dispute its obligation to comply with § 265.147, whatever the scope of its obligations in the consent order. The district court correctly found that Ekco operated the Massillon impoundment as a disposal facility from at least August 1988 to July 1992; that, although Ekco never obtained interim status, it was nonetheless subject to the Part 265 financial requirements; and that § 265.147 requires an owner/operator of a hazardous waste facility to demonstrate financial responsibility for third-party claims throughout the closure process until final closure is certified. § 265.147(e).² The conclusion which follows is that Ekco was obligated to comply with § 265.147 until the impoundment's final closure was certified, and violated its obligation.

Ekco attempts to side-step the requirements of § 265.147 by relying on the 1984 Hazardous and Solid Waste Amendments to the RCRA, Pub. L. 98-616 (1984). Included in those amendments is the provision codified at 42 U.S.C. § 6925(e), which operated to put an outside limit on interim status. Pursuant to § 6925(e), an existing land disposal facility would lose interim status unless the facility applied for a final determination regarding its permit and certified that it was in compliance with all groundwater monitoring and financial responsibility requirements by November 8, 1985, the loss of interim status (LOIS) deadline. Congress initially provided for interim status to allow hazardous waste facilities to operate, while giving the EPA sufficient time to act on permit applications. As indicated by the LOIS amendment, Congress determined in 1984 that owners/operators should

² See also 51 Fed. Reg. 16422 (1986) (explaining time period for which liability coverage must be procured).

move out of this short-term status and into full RCRA compliance. In 1985, the EPA issued Interim Status Standards for implementation of the 1984 amendments. 50 Fed. Reg. 38946 (1985). These standards made clear that the consequence of loss of interim status was closure of the facility in question.

Ekco contends that early cases construing the LOIS amendment had the effect of excusing facilities from compliance with the financial responsibility requirements if they shut down by that date. Ekco states that it had ceased operating the surface impoundment in 1984, when it stopped discharging waste into it,³ and therefore was excused from compliance. We disagree.

The cases relied upon by Ekco are those in which owners/operators contended that they could not certify compliance with the financial responsibility requirements prior to the LOIS deadline because it was impossible to obtain insurance coverage which would enable them to do so. These cases suggest that an owner/operator would not be required to certify compliance with the financial responsibility requirements if it simply ceased operations prior to the LOIS deadline. See *United States v. Clow Water Sys.*, 701 F. Supp. 1345, 1348 (S.D. Ohio 1988); *United States v. Allegan Metal Finishing Co.*, 696 F. Supp. 275, 285 (W.D. Mich. 1988); *United States v. T & S Brass and Bronze Works, Inc.*, 681 F. Supp. 314, 319-20 (D.S.C.), *aff'd in part and vacated in part on other grounds*, 865 F.2d 1261 (4th Cir. 1988) (Table). None of these cases, however, directly confronts the issue posed here, whether an owner/operator must nonetheless satisfy

³ Ekco did not "cease operating" the impoundment when it stopped actively discharging waste into it in 1984. Rather, as the district court found, Ekco operated the impoundment as a disposal facility from at least 1988 to 1992, as evidenced by its initial plan to maintain the waste at the site after closure. See 40 C.F.R. § 270.2, defining "disposal facility" as one at which hazardous waste is intentionally placed into or on the land or water, and at which hazardous waste will remain after closure.

the financial responsibility requirements imposed by subpart H of Part 265 until final closure of the facility in question is certified. Moreover, the approach suggested in these cases is wholly unsatisfactory, as it would operate to reward those owners/operators which flouted the interim status and LOIS requirements by exempting them from complying with the financial responsibility requirements until final closure of their facilities, while leaving the balance of the regulated community subject to those requirements.

We decline to transform a statutory penalty—the loss of interim status—into an absolution from otherwise applicable regulatory obligations. Construing § 6925(e) in this manner would defeat its obvious goal of bringing facilities into full compliance with the RCRA. See *In re Gordon Redd Lumber Co.*, RCRA Appeal No. 91-4, 1994 RCRA LEXIS 29 at *55 (June 9, 1994) (rejecting argument that respondent was not required to comply with § 265.147 because it had chosen to cease operations). We therefore conclude that Ekco's obligation to comply with § 265.147 was not affected by the 1984 LOIS amendment, and affirm the district court's holding that Ekco violated § 265.147 and was subject to civil penalties as a result.

B. Consent Decree

The consent order required Ekco to "[c]omply with the financial responsibility requirements for closure until closure has been certified, pursuant to 40 C.F.R. 265.140 through 265.151[.]" Ekco claims that the emphasized words required it only to establish financial assurances for closure and post-closure care pursuant to § 265.143 and § 265.145, respectively, and that the decree did not include the obligation to demonstrate financial responsibility for third-party claims as set forth in § 265.147. The question thus presented is whether § 265.147 imposes a "financial responsibility requirement for closure" in the context of the consent order at issue. We conclude that it does.

As an initial matter, there is no question but that § 265.147 is a "financial responsibility requirement."

Congress directed the EPA to promulgate regulations setting forth performance standards necessary to protect human health and the environment, including standards relating to "financial responsibility." 42 U.S.C. § 6924(a)(6). See also § 6924(t) (itemizing types of financial responsibility requirements permissible). Section 265.147 is one of the "financial requirements" enumerated in subpart H of Title 40, Part 265. The Federal Register notices pertaining to Part 265's requirements refer to § 265.147 as a financial responsibility requirement. See 52 Fed. Reg. 44,314 (1987); 51 Fed. Reg. 25,350 (1986). The obligation set forth in § 265.147 is, by its own terminology, a "financial responsibility" requirement, and § 265.147 expressly is included by the consent order's reference to "those regulations found at 40 C.F.R. §§ 265.140 through 265.151." (Emphasis added.)

To accept Ekco's argument, it would be necessary to hold that the words "for closure" negate the otherwise plain meaning of the language at issue, and limit Ekco's duties to establishing "financial assurance" for closure and post-closure care pursuant to §§ 265.143 and 265.145. This construction is untenable. The consent order does not refer to the "financial assurances" requirements, but to the broader category of "financial responsibility requirements," of which § 265.147 clearly is one. The parties entered into the consent order contemplating that the surface impoundment would be closed, and agreed that Ekco would comply with the financial responsibility requirements when it submitted its closure plan. By its reference to "for closure," the consent order merely incorporates the course of action planned by the parties, and agreed upon in the very same instrument. In sum, we are presented with no basis⁴ on which to disturb the district court's construction

⁴In a June 1990 letter to the EPA, an Ohio EPA official expressed his view that the consent order did not independently require Ekco to document its financial responsibility for third-party claims. There is no evidence that Ekco was aware of the letter at the time, or relied on the letter in any way. Because we conclude that the consent order is unambiguous, we need not resort to extrinsic evidence. Moreover, the Ohio EPA was not a party to the consent order, and the view of one of its officials is of no weight in determining its

of the terms of the consent order. Pursuant to the unambiguous language of that order, Ekco was obligated to comply with § 265.147.

IV. Whether District Court Abused Its Discretion in Setting Amount of Penalty

Section 3008(g) of the RCRA provides:

Any person who violates any requirement of this subtitle shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation. Each day of such violation shall, for purposes of this subsection, constitute a separate violation.

42 U.S.C. § 6928(g). Subsection (c) provides that a violation of a compliance order also renders the violator subject to a \$25,000 per day penalty. In imposing civil penalties, it is appropriate for the court to take into account the seriousness of the violation and any good faith efforts to comply. See 42 U.S.C. § 6928(a)(3). Numerous other factors are relevant, including the harm caused by the violation, any economic benefit derived from noncompliance, the violator's ability to pay, the government's conduct, and the clarity of the obligation involved. *United States v. Bethlehem Steel Corp.*, 829 F. Supp. 1047, 1055 (N.D. Ind. 1993) (collecting cases). The assessment of civil penalties is committed to the informed discretion of the court, and we review only for abuse of discretion. *United States v. Midwest Suspension and Brake*, 49 F.3d 1197, 1205 (6th Cir. 1995) (citing *United States EPA v. Environmental Waste Control, Inc.*, 917 F.2d 327, 335 (7th Cir. 1990), cert. denied, 499 U.S. 975 (1991)). This court will find an abuse of discretion when the district court relies on clearly erroneous findings of fact or uses an erroneous legal standard. *Newsom v. Norris*,

888 F.2d 371, 373-74 (6th Cir. 1989). On appeal, Ekco contends that the district court abused its discretion in giving insufficient weight to numerous alleged mitigating factors, and in imposing a penalty allegedly disproportionate to that imposed against other RCRA violators. We address each argument in turn.

A. Mitigating Factors

In determining whether the court gave Ekco short shrift in its treatment of the numerous alleged mitigating factors, we first examine the purpose of the financial responsibility regulations, which is to require the owner/operator of a hazardous waste facility to document that it has secured the resources required to close the facility in an appropriate and safe manner, and to pay third-party claims that may arise from its operations. *Vineland Chem. Co. v. United States EPA*, 810 F.2d 402, 404 n.1 (3d Cir. 1987). The timing of these obligations is critical. The regulations require that the owner/operator secure the necessary funds, and document that it has done so, *prior* to closure. This requirement is imposed to reduce the risk that insufficient funds will be available after the facility is shut down, when the owner/operator may not have the economic ability or incentive to devote resources to a defunct operation. See generally 47 Fed. Reg. 32274 (1982) (interim rules regarding hazardous waste treatment, storage and disposal facilities). Similarly, the regulations set forth specific requirements regarding the *manner* in which the funds are to be secured to provide the appropriate level of assurance that the funds will, in fact, be available when needed. *Id.*

Mindful of these significant regulatory goals, we reject Ekco's contention that the \$1000 per day penalty was excessive because AHP always had the financial resources to close the impoundment and satisfy third-party claims, and ultimately provided the necessary documentation. Ekco's "no harm--no foul" theme, recurrent throughout this appeal, simply misses the mark. Ekco was required to have secured the funds and documented their existence on each day of each year in question. It cannot escape the

consequences of its inaction by pointing to its eventual, and untimely, compliance.

We are persuaded, however, that the district court gave too little weight to the fact that Ekco substantially complied with its closure and post-closure care obligations on June 25, 1990, when it submitted AHP's letter of credit; and with its third-party claims obligations on September 29, 1992, when it submitted AHP's guarantee. The court found that technical defects existed in both instruments, leading it to continue the \$1000 per day penalty for each violation until final abatement. The penalty imposed for the period following Ekco's substantial compliance is significant, as the time period involved exceeds two years for two violations, and five months for the third violation.

The EPA legitimately may require that financial responsibility requirements be satisfied in the manner specified in the regulations, and an owner/operator's failure to comply with those requirements renders it subject to the imposition of penalties. In assessing the seriousness of a violation of this type, however, the court should consider principally whether the defects threaten the availability of the funds. Other relevant factors include the violator's attempt to cure the defects, whether there are impediments to cure that are outside the violator's direct control, and the timeliness of the violator's response.

We conclude that the amount of the penalty imposed here is excessive, because the record does not reflect that the defects in the letter of credit and guarantee in any way impaired the availability of the funds. There is no indication that the defects in the letter of credit, e.g., the failure to provide a duplicate trust agreement and to name Ekco in the letter of credit itself, had any bearing on the bank's obligation to pay Ohio EPA upon presentment. Likewise, there is no evidence that AHP's guarantee was invalid when originally submitted, and its sole "defect" was in having an effective date of 1988 rather than the date on

which it was executed.⁵ Ekco documented that secured funds were available in amounts that were satisfactory to Ohio EPA. The principal purpose of the regulations thus was fulfilled, and Ekco should not be required to pay the same amount in penalties for the period following its substantial compliance as it must pay for the period when it was in complete default. We therefore remand to permit the district court to re-assess the proper penalty to be imposed for the periods noted above.

The district court did not abuse its discretion in its assessment of Ekco's remaining mitigation claims. Ekco concedes that the amount of its penalty can be based on the economic benefit gained through noncompliance, but contends that the court erred by calculating the amounts saved by Ekco in not procuring a letter of credit and liability insurance coverage, rather than with reference to the costs ultimately incurred by AHP in procuring a letter of credit and in submitting a guarantee. Ekco, not AHP, was bound by the regulations and consent order.⁶ Until AHP stepped forward, Ekco was required to comply with the regulations, and realized cost savings by not doing so.⁷

⁵At oral argument, plaintiff's counsel acknowledged that Ohio EPA rejected the backdated guarantee out of a concern that Ekco was attempting to reduce its liability for penalties for the years before it submitted the guarantee. If this is indeed the case, Ohio EPA could have accepted the guarantee while reserving the right to contest its relevance to the issue of penalties. As it is, Ohio EPA's insistence on a 1992 effective date operated to significantly reduce the scope of the guarantee.

⁶While Ekco vigorously maintains that AHP was at all times obligated to satisfy its indemnity agreement, AHP's obligation is less than clear from the indemnity language in the purchase documents themselves, as the district court so found.

⁷We find no evidentiary error in the court's consideration of plaintiff's expert testimony on the cost savings to Ekco.

B. Allegedly Disproportionate Penalty

Ekco contends that the court abused its discretion in imposing a penalty significantly higher than penalties imposed against other owners/operators for similar violations. The penalties imposed in other cases are indeed relevant. *See Sterling v. Velsicol Chem. Corp.*, 855 F.2d 1188, 1207 (6th Cir. 1988) (civil damage awards 8 to 40 times award made in prior case excessive, and shocked judicial conscience). The reasonableness of a penalty, however, is a fact-driven question, one that turns on the circumstances and events peculiar to the case at hand.

Viewed in this light, the decisions relied upon by Ekco do not provide meaningful guidance. Ekco relies almost exclusively on EPA administrative cases, decided at the earliest stages of the enforcement process, in which violators were assessed penalties in the thousands-of-dollars range for violating financial responsibility requirements.⁸ Ekco was in a position analogous to these violators in 1989 when it entered into a consent order requiring it to pay \$55,478 for the violations cited in the administrative complaint. This case was brought several years later, following Ekco's continued default in its obligations under both the regulations and the consent order.

⁸ E.g., *In the Matter of Marley Cooling Tower Co.*, No. RCRA-09-88-008, 1989 RCRA LEXIS 22 (Nov. 30, 1989) (\$7000 penalty for failing to update financial assurances and in failing to demonstrate financial responsibility for third-party claims); *In the Matter of Landfill, Inc.*, Appeal No. 86-8, 1990 RCRA LEXIS 65 (Nov. 30, 1990) (financial assurance penalty of \$1900); *In re Frit Indus.*, No. RCRA-VI-415-H, 1985 RCRA LEXIS 4 (Aug. 5, 1985) (financial assurance penalty of \$1200). Ekco acknowledges that later administrative cases have imposed more significant penalties for financial responsibility requirement violations. *In the Matter of Hannon Electronics*, No. RCRA-VII-91-H-0037, 1994 RCRA LEXIS 52 (Dec. 12, 1994) (\$251,875 for four years of noncompliance); *In the Matter of Standard Tank Cleaning Corp.*, No. II-RCRA-88-0110, 1991 RCRA LEXIS 47 (Mar. 21, 1991) (\$145,313 for six years of noncompliance), *aff'd*, Appeal No. 91-2 (July 19, 1991).

Ohio EPA

Re: Ekco Housewares Company
Stark County
OHD 015-205-424
Generator

Mr. Leo Hahn
Ekco Housewares Company
359 State Avenue Extension N.W.
Massillon, Ohio 44646

November 23, 1984

Dear Mr. Hahn:

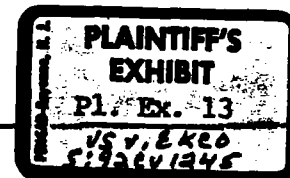
On November 9, 1984, Eileen Mohr and I visited the Ekco Housewares Company to investigate a complaint received by this office, conduct a reinspection of your facility with respect to the Ohio Hazardous Waste regulations, and to discuss the ground water problem at your facility. You represented Ekco during this visit.

Recently this office received a complaint regarding the alleged dumping of solvents by Ekco employees behind the plant. No evidence of recent solvent dumping was observed, although soils appeared stained from mismanagement of oils in the area of concern. Contaminated soils should be cleaned up and disposed of properly.

With regards to the generator reinspection, it is apparent that much effort has been exerted to obtain compliance with the applicable Ohio Hazardous Waste rules although a few deficiencies still exist including:

1. A list of emergency equipment including safety equipment, fire control equipment, and spill control equipment should be added to the Contingency Plan prepared by Ekco.
2. Drums of water/solvent condensate generated from the vapor degreasers must be marked with the words "Hazardous Waste" and the date of accumulation. The presence of trichloroethylene or 1,1,1 trichloroethane contained in this mixture constitute the condensate as a listed F001 hazardous waste.

Regarding the conversation we had concerning the ground water contamination issue at your facility, we decided that another meeting will be scheduled at the Northeast District Office after Eileen Mohr has a chance to review the investigative work that has been completed by Ohio Drilling. I will be in contact with Mr. Shingleton in the near future to decide on a date for this meeting.



Mr. Leo Hahn
Ekco Housewares Company
Page 2

November 23, 1984

Please forward to me within 30 days from the date of this letter a copy of your facility's Contingency Plan with the additions mentioned above.

Please contact me at (216) 425-9171 if you have any questions.

Yours truly,



Rodney Beals
Environmental Scientist
Division of Solid & Hazardous Waste Management
Northeast District Office

RB:kr

cc: Paula Cotter, DSHWM, Central Office
Eileen Mohr, DWQMA, Northeast District Office
Tom Shingleton, Ekco Housewares

E001994

State of Ohio Environmental Protection Agency

Northeast District Office
2110 E. Aurora Road
Twinsburg, Ohio 44097-1999
(216) 425-9171



Richard S. Calais
Governor

March 17, 1988

RE: EKCO HOUSEWARES, INC.
STARK COUNTY
OKD 045-209-424

CERTIFIED MAIL

Mr. Thomas J. Shingleton
BKCO Housewares, Inc.
Massillon Works
759 State Ave., N.S.
P. O. Box 560
Massillon, Ohio 44648

De: JEPs
Tunisia
4/22

Dear Mr. Shingleton:

On February 29, 1988, I met with you and Tom Karpovechic to conduct an inspection of the EXCO Housewares Massillon Facility. Also present during the inspection were Walter Nied, U.S., EPA, Ken Petrine and Tim McGuinness. The purpose of the inspection was to determine this facility's compliance with State and Federal Hazardous waste regulations. Copies of the inspection reports are attached for your records.

The following violations were noted during the inspection:

1. Hazardous wastes accumulated at or near the point of generation must be stored in containers which are closed (except when adding wastes) and which are marked to identify the contents (40 CFR 262.34 and OAC 3745-52-34). One drum of waste silicon coating was not labeled, one drum of degreaser still bottoms was not closed.
2. The facility's contingency plan must include the notification of Ohio EPA Emergency Response as part of the emergency procedures to be followed (OAC 3745-63-56 (D)).
3. The facility must establish financial assurance for closure (40 CFR 265.143 and OAC 3745-66-43), and for liability coverage (40 CFR 265.147 and OAC 3745-66-47).

It is also recommended that the inspection logs for the storage areas include a description of what is being looked for during the inspection.



E002077

Page Number: 2
March 17, 1988
Mr. Thomas A. Shingleton

Ohio EPA
NEDO

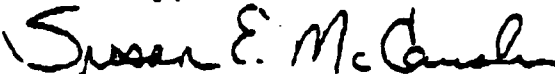
The facility's compliance with groundwater monitoring regulations was not reviewed during the inspection. A comprehensive groundwater monitoring evaluation of this facility will be conducted by the Ohio EPA in the near future. Facility compliance with groundwater regulations will be established at that time.

It is my understand that a draft closure plan has been prepared for this facility and has been submitted to U.S. EPA for review. Ohio EPA also needs to be provided copies of this plan. Compliance with closure regulations will be reviewed upon our receipt of the closure plan.

Please submit, to my attention, documentation that the above listed violations have been corrected within 30 days of your receipt of this letter. If you have any questions, feel free to call me at (216) 425-9171.

A Land Disposal Restriction inspection was also conducted; no deficiencies were noted. A copy of this report will be forwarded to U.S. EPA - Region V.

Sincerely,



Susan E. McCauslin
Environmental Scientist
Division of Solid and Hazardous Waste
Management

SEM/ep

Enclosures

cc: Dave Sheltis, DSHWM, Central Office
Debby Berg, DSHWM, NEDO

(A)

E002078

EKCO.
HOUSEWARES, INC.

RECEIVED

APR 25 1988
MINTE, LEVIN, COHN, FERRIS
CLARKSON & POPPE P.C.

April 22, 1988

Susan E. McCauslin
Environmental Scientist
Division Of Solid & Hazardous Waste Management
Ohio EPA
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087-1969

Re: Ekco Housewares, Inc.
Stark County OHD 045-205-424

Dear Ms. McCauslin:

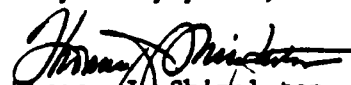
Reference is made to your letter dated March 17, 1988. Ekco Housewares' Massillon facility has corrected the first two violations noted in your letter.

With respect to the third noted violation, i.e., the establishment of financial assurance, we respectfully request an extension of time in which to comply with that requirement. First, Ekco is negotiating with the United States Environmental Protection Agency Region 5 a consent order that will include a RCRA closure plan. Until that closure plan is finally approved, the amount of closure and post-closure care costs for which financial assurance will be established will not be known. We respectfully suggest that consistent financial assurances should be established for both federal and state requirements.

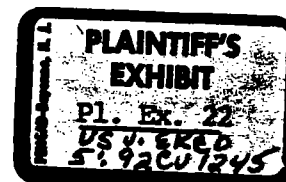
Second, you may be aware that the predecessor owners of Ekco Housewares, Inc. (Ekco) have assumed responsibility for, among other things, closure of the lagoon/surface impoundment. As a result, Ekco has requested the predecessor owners to arrange the financial assurance for closure and liability coverage requested by you in your letter of March 17, 1988. The predecessor owners are, at this time, reviewing our request. We expect a definitive response shortly.

In light of these circumstances, as our lawyer indicated to you by telephone today, we request an extension of time in which to respond to the third alleged violation until May 31, 1988. We intend to keep you informed as to our progress in complying with this requirement.

Very truly yours,


Thomas J. Shingleton
General Manager

CC: J. Weinstein
C. F. Kerry
J. Mantel
S. A. Tasher
R. N. Fox



E002079



State of Ohio Environmental Protection Agency

P.O. Box 1049, 1800 WaterMark Dr.
Columbus, Ohio 43266-0149

Richard F. Coe
Governor

September 22, 1989

RE: Ecko Housewares, Inc.
Massillon Works
OHD045205424
Financial Assurance

Thomas J. Shingleton, Plant Manager
Ecko Housewares, Inc., Massillon Works
359 State Avenue, N.W.
P.O. Box 560
Massillon, OH 44648

Dear Mr. Shingleton:

On September 21, 1989, I conducted an annual financial record review for Ecko Housewares, Inc., Massillon Works, to evaluate compliance with the financial assurance requirements, set forth in Ohio Administrative Code (OAC) rules 3745-66-42 through 3745-66-47. Under these rules, Ecko Housewares, Massillon Works, must have and maintain cost estimates for hazardous waste facility closure and post-closure care, financial assurance for closure and post-closure care, and liability coverage for sudden and non-sudden accidental occurrences.

To date, Ecko Housewares, Massillon Works, has not provided any documentation demonstrating compliance with these financial assurance requirements. Therefore, the facility is in violation of OAC rules 3745-66-42 through 3745-66-47.

I note that the August, 1988 closure plan for the facility was disapproved by Ohio EPA, effective February 6, 1989. This plan included a \$999,700.00 closure cost estimate and a \$747,000.00 post-closure cost estimate. Consequently, estimates must be revised, pursuant to OAC rules 3745-66-42 and 3745-66-44, before Ecko Housewares, Massillon Works establishes a financial assurance mechanism(s) for closure and post-closure care, pursuant to OAC rules 3745-66-43 and 3745-66-45.

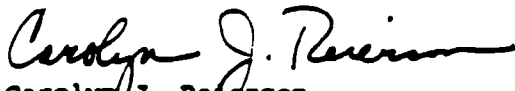
As a result of my review, I note that Ecko Housewares, Massillon Works was previously informed of the above violations and requirements by letter dated March 17, 1988, from Ohio EPA, Northeast District Office. In addition, Ecko Housewares Massillon Works entered into a Partial Consent Agreement and Final Order with U.S. EPA, Region V (Docket No. V-W-87-R-008) which required compliance with the financial assurance requirements until final closure, pursuant to 40 CFR 265.140 through 265.151.



Thomas J. Shingleton
September 25, 1989
Page Two

Please submit documentation within thirty (30) days of receipt of this letter demonstrating that Ecco Housewares, Inc., Massillon Works has abated the above violations and is in compliance with the requirements of OAC rules 3745-66-42 through 3745-66-47. If you have any questions, please call me at (614)644-2944.

Sincerely,



Carolyn J. Peterson
RCRA Enforcement Section
Division of Solid and Hazardous Waste Management

CJR/dr
1829S/55-56

cc: Mike Savage, DSHWM
Susan McCauslin, NEDO
Sally Averill, U.S. EPA, Region V



State of Ohio Environmental Protection Agency

P.O. Box 1049, 1800 WaterMark Dr.
Columbus, Ohio 43266-0149
(614) 644-3020 Fax (614) 644-2329

RECEIVED

OCT 17 1990

GERALDINE A. MOSS

Richard F. Celeste
Governor

October 16, 1990

Re: Ecco Housewares, Inc.
OHD045205424
Financial Assurance

Geraldine A. Moss
American Home Products Corporation
685 Third Avenue
New York, New York 10017

Dear Ms. Moss:

On June 28, 1990 Ohio EPA received your letter dated June 25, 1990 with attached (1) Letter of Credit No. IC-78084 issued by Banco De Roma to the American Home Products Corporation on May 24, 1990; and (2) Trust Agreement entered into on May 11, 1990 between the American Home Products Corporation and the Manufacturers Hanover Trust Company. These documents are submitted on behalf of the Ecco Housewares, Inc. facility referenced above to meet the financial assurance requirements for closure care and post-closure care as set forth in Ohio Administrative Code (OAC) rules 3745-66-43 and 3745-66-45.

Upon review of the documents, Ohio EPA finds the following violations of the OAC:

1. OAC rule 3745-66-43, 3745-66-45, because the Letter of Credit must be issued to the owner or operator of a hazardous waste facility. Ohio EPA currently does not have closure or post-closure financial assurance rules which allow a third party with a "substantial business relationship" to provide financial assurance for closure or post-closure of a hazardous waste facility.
2. OAC rule 3745-66-43(C) (3) (a), 3745-66-45(C) (3) (a), because the Letter of Credit was not accompanied by an originally signed duplicate of the Trust Agreement. The signatures of the Grantor and Trustee were not accompanied by an Attest Title/Seal for each signature as required by OAC rule 3745-55-51(A).
3. OAC rule 3745-66-43(C) (4), 3745-66-45(c) (4), because the Letter of Credit was not accompanied by a letter from the owner or operator with the information specified in these rules.



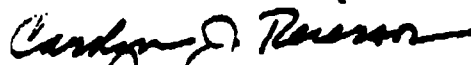
Geraldine A. Moss
October 16, 1990
Page Two

Please respond within thirty (30) days of receipt of this letter, demonstrating that the Letter of Credit has been issued exclusively to the owner or operator of the facility, Ecco Housewares, Inc., or jointly to the American Home Products Corporation and Ecco Housewares, Inc. Please also include documentation resolving the remaining violations noted above.

If the Letter of Credit cannot be issued to Ecco Housewares, Inc., Ohio EPA may consider allowing the facility to use the third party Letter of Credit to demonstrate compliance with OAC rules 3745-66-43 and 3745-66-45 on the basis of a "substantial business relationship" as defined in OAC rule 3745-66-47(G). In either case, Ohio EPA requests that the American Home Products Corporation submit documentation to Ohio EPA which describes the "substantial business relationship" between the American Home Products Corporation and Ecco Housewares, Inc.

If you have any questions or wish to discuss this matter, I may be reached at (614) 644-2934.

Sincerely,



Carolyn J. Raderson
Hazardous Waste Enforcement Section
Division of Solid and Hazardous Waste Management

cc: Laurie Stevenson, DESM, CO
Janet Boyer, DESM, NEDO
Steve Oster, Wilkie Parr & Gallagher
Thomas Shingleton, Ecco Housewares, Inc.
Sally Averill, U.S. EPA, Region V



State of Ohio Environmental Protection Agency

P.O. Box 1049, 1800 WaterMark Dr.
Columbus, Ohio 43266-0149
(614) 644-3020
FAX (614) 644-2329

George V. Vo
G

July 8, 1991

Re: Ekco Housewares, Inc.
OHD045205424

Geraldine A. Moss
Law Department
American Home Products Corporation
685 Third Avenue
New York, NY 10017

Thomas Shingleton, Plant Manager
Ekco Housewares, Inc.
359 State Avenue, NW
Massillon, OH 44648

Dear Ms. Moss and Mr. Shingleton:

On June 27, 1991 Ohio EPA conducted a review of the financial assurance and liability coverage documentation on file for the Ekco Housewares, Inc. Massillon, Ohio facility referenced above. The facility was evaluated for compliance with the closure/post-closure cost estimate, closure/post-closure financial, and liability coverage requirements as set forth in Ohio Administrative Code (OAC) rules 3745-66-42 through 3745-66-45 and 3745-66-47.

To demonstrate financial assurance for closure and post-closure care in accordance with OAC rules 3745-66-42 through 3745-66-45, Ekco Housewares, Inc. uses Letter of Credit No. IC-78084 issued by Banco di Roma on May 24, 1990 in the amount of \$1,500,000.00. A Trust Agreement entered into between American Home Products Corporation and the Manufacturers Hanover Trust Company on May 11, 1990 accompanies the Letter of Credit. To demonstrate liability coverage for sudden and nonsudden accidental occurrences, Ekco Housewares, Inc. has not submitted documentation of compliance with OAC rule 3745-66-47 to Ohio EPA.

The following violation remains outstanding from the October 16, 1990 notice of violation sent to Geraldine A. Moss of American Home Products Corporation:

OAC rules 3745-66-43(C) (4) and 3745-66-45(C) (4), because the Letter of Credit was not accompanied by a letter from the owner or operator containing the information specified in these rules.



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E002087

Geraldine A. Moss
American Home Products
and
Thomas Shingleton
Ekco Housewares, Inc.
July 8, 1991
Page Two

As a result of the June 27, 1991 review Ohio EPA finds the following OAC violations:

1. OAC rules 3745-66-42 and 3745-66-44, because it appears that Ekco Housewares, Inc. is not maintaining current closure and post-closure cost estimates in accordance with these rules. The August, 1988 closure plan listed a closure cost estimate of \$999,700.00 and a post-closure cost estimate of \$747,000.00. These estimates have not been at least adjusted annually for inflationary increases. Please submit the current estimates for the facility. The Letter of Credit amount must be maintained at a level consistent with the current estimates.
2. OAC rules 3745-66-42 through 3745-66-45, the current Letter of Credit amount does not reflect an inflationary increase from the 1990 amount. The estimates must, at a minimum, be adjusted annually for inflation within sixty days prior to the anniversary date of the Letter of Credit (May 24). When the estimates exceed the amount of the Letter of Credit, within sixty (60) days after the increase is made the amount must either be revised upward or additional financial assurance must be obtained to cover the difference.

On a related matter, review of the Trust Agreement reveals that the wording is now inconsistent with the wording of the Letter of Credit. Since the Letter of Credit is issued jointly to Ekco Housewares, Inc. and American Home Products Corporation, the Trust Agreement wording must also be amended to reflect both parties.

3. OAC rule 3745-66-47, because Ekco Housewares, Inc. has not established and maintained liability coverage for sudden and nonsudden accidental occurrences. The OGL policy for Ekco Group, Inc., received by Ohio EPA on April 24, 1990, does not meet the requirements for sudden accidental occurrences since it contains an absolute exclusion for pollution coverage. Furthermore, a Certificate or Endorsement was not submitted in accordance with this rule. A request for variance from the nonsudden accidental occurrences requirement has been submitted to Ohio EPA regarding this matter. Ohio EPA will respond to the variance under separate cover. Pending a response from Ohio EPA, the submittal of a variance request does not relieve Ekco Housewares, Inc. from the requirements of this rule.

Geraldine A. Moss
American Home Products
and
Thomas Shingleton
Ekco Housewares, Inc.
July 8, 1991
Page Three

Within thirty (30) days of receipt of this letter, please submit documentation demonstrating that Ekco Housewares, Inc. has abated the violations cited above. If you have any questions, I may be reached at (614) 644-2934.

Sincerely,



Carolyn Reiersen
Hazardous Waste Enforcement Section
Division of Solid and Hazardous Waste Management

Sp.CR.lcn

cc: Laurie Stevenson, HWES, DSHM
Karen Nesbit, DSHM, NEDO
Sally Averill, U.S. EPA, Region V
~~Steve O'Casey, WEHIS Staff & Gallagher~~
Pamela Allen, Manager, HWES, DSHM

E002089



State of Ohio Environmental Protection Agency

Box 1048, 1800 WaterMark Dr.

mbus, Ohio 43266-0148

(614) 644-3020

FAX (614) 644-2329

George V. Voinovich
GovernorDonald R. Schregardus
Director

August 11, 1992

Re: Ekco Housewares, Inc.
OHD045205424

Geraldine A. Moss
Law Department
American Home Products Corporation
685 Third Avenue
New York, NY 10017

Thomas Shingleton, Plant Manager
Ekco Housewares, Inc.
359 State Avenue, NW
Massillon, OH 44648

Post-It™ brand fax transmittal memo 7671		# of pages > 6
To: JACQUELINE KLINE	From: KELLY SMITH	
Co: US EPA	Co: OHIO EPA DANNY	
Dept:	Phone #: 614 644-2952	
Fax #: (312) 886-7160	Fax #	

Dear Ms. Moss and Mr. Shingleton:

On July 21, 1992, Ohio EPA conducted a review of the financial assurance and liability coverage documentation on file for the Ekco Housewares, Inc. Massillon, Ohio facility referenced above. The facility was evaluated for compliance with the closure/post-closure cost estimate, closure/post-closure financial and liability coverage requirements as set forth in Ohio Administrative Code (OAC) rules 3745-66-42 through 3745-66-45 and 3745-66-47.

To demonstrate financial assurance for closure and post-closure care in accordance with OAC rules 3745-66-42 through 3745-66-45, Ekco Housewares, Inc. uses Letter of Credit No. IC-78084 issued by Banco di Roma on May 24, 1990 in the amount of \$1,500,000.00. A Trust Agreement entered into between American Home Products Corporation and the Manufacturers Hanover Trust Company on May 11, 1990 accompanies the Letter of Credit. Ekco Housewares, Inc. has not submitted documentation to demonstrate compliance with OAC rule 3745-66-47.

The following violation remains outstanding from the October 16, 1990 and July 8, 1991 Notices of violation sent to Geraldine A. Moss of American Home Products Corporation and Thomas Shingleton of Ekco Housewares, Inc.

OAC rules 3745-66-43(C) (4) and 3745-66-45(C) (4), because the Letter of Credit was not accompanied by a letter from the owner or operator containing the information specified in these rules.

To demonstrate abatement of the above violations, please submit the required owner/operator's letter to this office for review.



Ekco Housewares, Inc.

July 21, 1992

Page 2

August 11, 1992

The following violations remain outstanding from the July 8, 1991 Notice of Violation sent to Geraldine A. Moss of American Home Products Corporation and Thomas Shingleton, Ekco Housewares, Inc. These violations were also discovered during the July 21, 1992 review of the financial assurance documentation and the company's most recent closure/post-closure cost estimates as included in the RCRA Closure Plan for Ekco Housewares dated July 23, 1992.

1. OAC rules 3745-66-42 and 3745-66-44, because Ekco Housewares, Inc. is not maintaining current closure and post-closure cost estimates in accordance with these rules. A review of the company's previous cost estimates as included in the August, 1988 closure plan reveals a closure cost estimate of \$999,700.00 and a post-closure cost estimate of \$747,000.00. Since 1988, these estimates were not at least adjusted annually for inflationary increases. The most recent cost estimate as included in the July 23, 1992 Closure Plan identifies the closure cost estimate as \$1,363,600.00, a decrease of \$383,300.00 from the previous 1988 estimate .

In review of the July 23, 1992 estimate, it also does not appear that closure decontamination activities have been accounted for in the estimate. Further, the July 23, 1992 estimate does not account for any post-closure activities, previously estimated at \$747,000.00.

To demonstrate abatement of the above violations, please submit documentation to this office which substantiates the above referenced decrease in the total cost estimate and the elimination of costs associated with post-closure. Included with this submittal, please provide this office with a copy of the company's current detailed cost estimate which includes a breakdown of the specific costs associated with all aspects of closure/post-closure activities.

2. OAC rules 3745-66-43 and 3745-66-45, because the current Letter of Credit amount does not reflect an inflationary increase from the 1990 and 1991 amounts. The estimates must, at a minimum, be adjusted annually for inflation within sixty days prior to the anniversary date of the Letter of Credit (May 24). When the estimates exceed the amount of the Letter of Credit, within sixty (60) days after the increase is made the amount must either be revised upward or additional financial assurance must be obtained to cover the difference.

This violation will remain outstanding pending receipt and review of additional documentation substantiating the recent decrease in the closure/post-closure estimate by Ohio EPA.

Ekco Housewares, Inc.

July 21, 1992

Page 3

August 11, 1992

3. OAC rule 3745-66-47, because Ekco Housewares, Inc. has not established and maintained liability coverage for sudden and nonsudden accidental occurrences.

The CGL policy for Ekco Group, Inc., received by Ohio EPA on April 24, 1990, expired on September 7, 1990. This policy did not meet the requirements for sudden accidental occurrences because it contained an absolute exclusion for pollution coverage. Furthermore, a Certificate or Endorsement was not submitted in accordance with this rule.

In a letter dated August 2, 1991, Ohio EPA notified Geraldine A. Moss of American Home Products Corporation that a request for variance from the requirements of OAC rule 3745-66-47 submitted for Ekco Housewares, Inc. on June 11, 1991 could not be granted because Ekco Housewares, Inc. did not adequately demonstrate that the risks associated with the operations of its facility dictated an elimination of the nonsudden financial responsibility requirement.

Therefore Ekco Housewares, Inc. must establish and maintain liability coverage for sudden and nonsudden accidental occurrences in accordance with OAC rule 3745-66-47.

Ekco Houseware's failure to comply with the financial assurance requirements as described in this Notice of Violation also constitutes a violation of the November 4, 1987 partial Consent Agreement and Final Order (CAFO).

Within thirty (30) days of receipt of this letter, please submit documentation demonstrating that Ekco Housewares, Inc. has abated the violations cited above. If you have any questions, please feel free to call either myself or Laurie Stevenson at (614) 644-2934.

Sincerely,



Kelly G. Smith
Compliance Monitoring and Enforcement Section
Division of Hazardous Waste Management



Laurie Stevenson
Compliance Monitoring and Enforcement Section
Division of Hazardous Waste Management

cc: Karen Nesbit, DHM, NEDO
Sally Averill, U.S. EPA, Region V
Steven Oster, Wilkie, Farr and Gallagher



State of Ohio Environmental Protection Agency

P.O. Box 1049, 1800 WaterMark Dr.
Columbus, Ohio 43266-0149

Richard F. Celeste
Governor

CERTIFIED MAIL

March 12, 1990

Re: Ecko Housewares, Inc.
Massillon Works
OHD045205424
Stark County

Thomas J. Shingleton, Plant Manager
Ecko Housewares Inc., Massillon Works
359 State Avenue, N.W.
P.O. Box 560
Massillon, OH 44648

Dear Mr. Shingleton:

I am writing to follow up on my previous September 22, 1989, letter to you regarding financial assurance for Ecko Housewares, Inc.'s ("Ecko") Massillon facility referenced above. Under Ohio Administrative Code (OAC) rules 3745-66-42 through 3745-66-47, Ecko is required to have and maintain estimates for closure and post-closure care, financial assurance for closure and post-closure care, and liability coverage for sudden and nonsudden accidental occurrences for its Massillon facility.

To date, Ohio EPA has not received documentation that such financial assurance has been established for the facility, in violation of OAC rules 3745-66-42 through 3745-66-47. I note that since financial assurance requirements were included in the partial Consent Agreement and Final Order entered into on November 4, 1987, between Ecko Housewares, Inc. and U.S. EPA, Region V, Ecko also appears to be in violation of this CAFO.

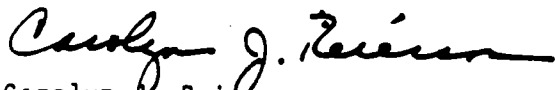
I must note, however, that in my recent February 12, 1990, telephone conversation with Steve Oster of Willkie Farr & Gallagher, he indicated that American Home Products, the former parent company of Ecko, is moving to establish a Letter of Credit for the Massillon facility to demonstrate financial assurance for closure and post-closure care. He made no mention of liability coverage for sudden and nonsudden accidental occurrences for the facility.



Thomas J. Shingleton
March 12, 1990
Page Two

If you have further questions, please call me at (614)644-2944.

Sincerely,



Carolyn J. Reiersen
RCRA Enforcement Section
Division of Solid and Hazardous Waste Management

CJR/lcn/1829S/65-66

cc: Michael Savage, Manager, RCRA Enforcement Section, DSHWM
Susan McCauslin, DSHWM, NEDO
Sally Averill, U.S. EPA, Region V
Steve Oster, Willkie Farr & Gallagher



State of Ohio Environmental Protection Agency

P.O. Box 1048, 1800 Watermark Dr.
Columbus, Ohio 43260-0148
(614) 644-3250
-AX (614) 644-2229

George V. Vukobrat
Director
Daniel R. Saragovitz
Deputy

December 24, 1992

Elco Housewares, Inc.
OEID04520424
Financial Assurance

Gerardine A. Moss
Law Department
American Home Products Corporation
685 Third Avenue
New York, NY 10017

Thomas Shingleton, Plant Manager
Elco Housewares, Inc.
359 State Avenue, NW
Massillon, OH 44648

Dear Ms. Moss and Mr. Shingleton:

On December 15, 1992, Ohio EPA completed a review of the financial assurance and liability coverage documentation received in response to our August 11, 1992 Notice of Violation (NOV) to Elco Housewares, Inc. ("Elco").

In a letter to Elco from Ohio EPA dated October 16, 1990, Elco was notified it had failed to provide a letter from the owner or operator to accompany the letter of credit as required by Ohio Administrative Code ("OAC") rules 3745-66-43(C)(4) and 3745-66-45(C)(4). Elco had failed to abate these violations. On September 21, 1992, Director Schwegelhaus received a September 9, 1992 letter from the EPCO Group, Inc. to accompany its Letter of Credit No. IC-78084 established by Banco di Roma. The September 9, 1992 letter appears to demonstrate compliance with OAC rules 3745-66-43(C)(4) and 3745-66-45(C)(4) and therefore this violation has been abated.

In a letter dated September 14, 1992, the law firm of Winkle Fier and Gallagher submitted documentation on behalf of Elco Housewares to address the additional violations set forth in the August 11, 1992 NOV. Ohio EPA strongly disagrees with the interpretation of Carolyn Retenson's statement regarding cost estimates. The most current, most accurate cost estimate will provide the most detailed information to a company for the establishment of financial assurance. Failure by a company to revise its cost estimates in no way relieves it from establishing and maintaining adequate financial assurance as required by OAC rule 3745-66-43. Ohio EPA acknowledges the cost estimates contained in the July 1992 closure plan as the most current cost estimate. Elco was originally informed of the violations of closure and post closure cost estimates in a September 22, 1989 NOV from Ohio EPA and has remained in violation of these rules since that NOV, but with the September 14, 1992



Elco Housewares, Inc.

December 24, 1992

Page 2

submittal, Elco has demonstrated compliance with OAC rule 3745-66-42. Elco is currently not required to demonstrate compliance with OAC rule 3745-66-44, cost estimates for post-closure, because the closure plan contemplates clean closure, therefore Ohio EPA has determined Elco is no longer in violation of OAC rule 3745-66-44. Should Elco fail to demonstrate clean closure, it would become subject to the requirements of OAC rule 3745-66-44. Elco should note that the cost estimate must be updated for inflation sixty days prior to the anniversary date of the letter of credit (May 24) used to demonstrate financial assurance for closure.

With regard to the violations of OAC rules 3745-66-43 and 3745-66-45 for Elco's failure to increase the letter of credit for inflation, because the estimate no longer includes costs for post closure, the letter of credit provides enough funding to cover the facility's current cost estimate for closure activities. Therefore, Elco has abated the violations of OAC rules 3745-66-43 and 3745-66-45 as cited in the August 11, 1992 NOV.

With a letter to Director Schweigert dated September 29, 1992, Willie Farr and Gallagher, on behalf of Elco, submitted documentation to demonstrate compliance with the liability requirements of OAC rule 3745-66-47 through the use of the corporate guarantee. This documentation consisted of a Letter from the Chief Financial Officer, a Description of American Home Product's Substantial Business Relationship with Elco, the Corporate Guarantee and the Report of Independent Public Accountant. The Letter from the Chief Financial Officer, certified on September 8, 1992, meets the wording requirements of OAC rule 3745-55-51 and demonstrates that American Home Products (as a substantial business relationship of Elco's) passes the financial test set forth in OAC rule 3745-66-47(F)(1)(a). The Description of American Home Product's Substantial Business Relationship with Elco attached to the Letter from the Chief Financial Officer satisfies the requirements of OAC rule 3745-66-47(G)(1). The Report of Independent Public Accountant meets the requirements of OAC rule 3745-66-47(F)(3)(c).

With regard to the Corporate Guarantee, the first paragraph fails to contain the words "our subsidiary" in accordance with the wording requirements of OAC rule 3745-55-51(H)(2). At this time, Ohio EPA is not requiring Elco to correct the wording because it appears there is a conflict between the wording requirements and the credentials of the Guarantor set forth in OAC rule 3745-66-47(G)(1). Finally, Elco remains in violation of OAC rule 3745-66-47 because the date the Guarantee was made (August 3, 1992) and the effective date of September 1, 1988 conflict. Ohio EPA expects the effective date to have occurred after the date the guarantee was made, and most likely, the date the parties certified the wording of the Guarantee and signed and witnessed the document. Elco has also failed to submit a copy of the independent certified public accountants report required by OAC rule 3745-66-47(F)(3)(b). This information may often be presented in a company's annual report as the "Report of Independent Auditors."

Elco Housewares, Inc.
December 24, 1992
Page 3

Finally, Ohio EPA disagrees with Mr. Oster's statement regarding liability coverage on Page 3 of the September 14, 1992 letter. Regardless of the fact Elco ceased discharging to its lagoon prior to the Loss of Interim Status deadline, Elco must continue to provide liability coverage until the lagoon has been certified closed in accordance with OAC rule 3745-66-15. Until the certification is acknowledged, Ohio EPA recognizes the lagoon as a land disposal unit requiring liability coverage.

Within thirty (30) days of the date of this letter, please submit a correctly dated Corporate Guarantee and the report required by OAC rule 3745-66-47(F)(3)(b). If you have any questions, please feel free to call me at (614) 644-2952.

Sincerely,

Kelly A. Smith

~~Regulatory Affairs~~

Compliance Monitoring and Enforcement Section
Division of Hazardous Waste Management

cc: Karen Nesbit, DHWM, NEDO
Laurie Stevenson, CM&RS, DHWM
Sally Averill, U.S. EPA Region V
Jacqueline Kline, U.S. EPA Region V
Steven Oster, Wilkie Farr and Gallagher



State of Ohio Environmental Protection Agency

12149, 1800 WaterMark Dr.
Jus. Ohio 43266-0149
(614) 644-3020
FAX (614) 644-2329

George V. Voinovich
Governor

Donald R. Schragarous
Director

August 2, 1991

Re: Ecko Housewares, Inc.
OHD045205424
Financial Assurance

Geraldine A. Moss
American Home Products Corporation
685 Third Avenue
New York, NY 10017

Dear Ms. Moss:

On June 11, 1990, Ohio EPA received a petition for a variance from the requirements of rule 3745-66-47 of the Ohio Administrative Code (OAC), concerning liability coverage for nonsudden accidental occurrences for Ecko Housewares.

Ohio EPA has reviewed the document and determined that based on the information contained in the petition, a recommendation to the Director on the disposition of the requested variance cannot be made at this time due to the following:

The variance does not contain a comprehensive technical assessment, including supporting documentation, of all risks associated with the waste management activities occurring at Ecko Housewares which could contribute to nonsudden accident occurrences. This assessment must consider nonsudden risks resulting from the operation of the surface impoundment such as potential long-term contamination of surface water, ground water, soil and air.

In the event that Ecko Housewares determines that the potential for long-term contamination is not present at the facility or that contamination present does not pose a significant risk, detailed supporting documentation must be submitted to Ohio EPA which verifies that no contamination currently exists at the facility and/or a demonstration that current contamination at the facility will present no long-term risk. This documentation must include analytical results from a representative number of samples taken from soils, surface and ground water which demonstrate the absence of contamination. For sample results which reveal contamination, the company must provide an assessment of all potential nonsudden accidental risks associated with such levels of contamination and the possible monetary liability associated with these risks.



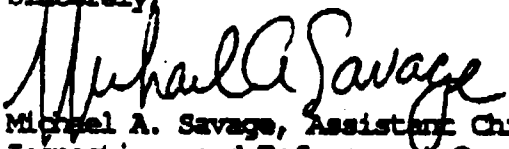
Geraldine A. Moss
American Home Products Corporation
August 2, 1991
Page Two

The current variance does not demonstrate that the structural integrity of the surface impoundment will be sufficient (until final closure is complete) to prevent nonsudden occurrences of contamination resulting from migration from the unit into soils, surface waters, ground water and air. This demonstration must include sufficient technical information (e.g. an engineering analysis) which demonstrates that the integrity of the unit will be maintained to prevent migration of contaminants until final closure. This technical demonstration must also include an assessment of the potential for structural failure of the unit which may lead to migration of contaminants from the unit. In the event that Ecco Housewares anticipates migration of contaminants resulting from structural failure of the unit, an assessment of risks associated with such a structural failure must be included in the above demonstration.

Until such time as Ecco Housewares, Inc. adequately demonstrates that the risks associated with the operations of its Massillon facility dictate an elimination of nonsudden financial responsibility required by rule 3745-66-47 of the OAC and such a variance is granted by the Director, Ecco Housewares, Inc. must demonstrate financial responsibility in the amounts required for nonsudden accidental occurrences at the facility. To date, Ecco Housewares, Inc. has failed to establish and maintain liability coverage for nonsudden accidental occurrences, in violation of rule 3745-66-47(B) of the OAC.

If Ecco Housewares, Inc. wishes to have the Agency continue to review the petition for a variance from nonsudden liability requirements, it must address all deficiencies noted above by submitting sufficient documentation of such to Carolyn Reiersen at the letterhead address.

Sincerely,



Michael A. Savage, Assistant Chief
Inspections and Enforcement Programs
Division of Solid and Hazardous Waste Management

Sp.MS.jm/lcn

cc: Linda Welch, Chief, DSHWM
Dave Sholtis, Asst. Chief, DSHWM
Pamela Allen, Manager, HSES, DSHWM
Laurie Stevenson, Unit Supervisor, HSES, DSHWM
Steve Oster, Willie Farr & Gallagher
Paul Anderson, DSHWM, NEDO



State of Ohio Environmental Protection Agency

P.O. Box 1049, 1800 WaterMark Dr.
Columbus, Ohio 43266-0149
(614) 644-3020
FAX (614) 644-2329

George V. Voinovich
Governor

Donald R. Schregardus
Director

April 14, 1993

Re: Ecko Housewares, Inc.
OHD045205424
Financial Assurance

Geraldine A. Moss
American Home Products Corporation
685 Third Avenue
New York, NY 10017

Thomas Shingleton, Plant Manager
Ecko Housewares, Inc.
359 State Avenue, NE
Massillon, OH 44648

Dear Ms. Moss and Mr. Shingleton:

This letter acknowledges receipt of March 11 and April 5, 1993 correspondence submitted on behalf of Ecko Housewares, Inc. by Carolyn Conkling of Wilkie, Farr and Gallagher. This documentation was submitted in response to the financial assurance violation of Ohio Administrative Code (OAC) rule 3745-66-47 regarding liability coverage and included:

- A re-executed final page of the corporate guarantee for liability coverage. This final page of the corporate liability guarantee was revised to reflect an effective date of August 3, 1992 - matching the date on which the guarantee was actually executed; and
- American Home Product Corporation's 1992 Annual Report which included the "Report of Independent Public Accountants."

With the submittal of the March 11, 1993 documentation, Ecko Housewares, Inc. has demonstrated that it is currently maintaining a corporate guarantee for liability coverage which adequately meets the requirements of OAC rule 3745-66-47. In addition, the April 5, 1993 submittal is adequate to demonstrate abatement of the violation of OAC rule 3745-6-43(F)(3)(b) as previously cited.

As requested in Ms. Conkling's letter dated March 11, 1993 Ohio EPA is returning the originally executed last page of the August 3, 1992 corporate guarantee (with an effective date of September 1, 1988) and is replacing this original page with the revised page submitted to Ohio EPA on March 11, 1993 (with an effective date of August 3, 1992).



Geraldine A. Moss
American Home Products, Inc.
and
Thomas Shingleton
Ecko Housewares, Inc.
April 14, 1993
Page Two

The original last page of the guarantee is being returned to Ms. Conkling as an attachment to this letter.

Failure to list specific deficiencies or violations in this correspondence does not relieve Ecko Housewares, Inc. from complying with all applicable requirements. Please be advised that past or future instances of non-compliance can continue as subjects of pending or future enforcement action.

Should you have any questions regarding this matter or if I can be of further assistance, please feel free to call me at (614)644-2934.

Sincerely,



Laurie Stevenson
Compliance Monitoring and Enforcement Section
Division of Hazardous Waste Management

wp.LS.lcn

Attachment

cc: Carolyn Conkling, Wilkie, Farr and Gallagher
Mr. Steve Oster, Wilkie, Farr and Gallagher
Pamela Allen, Manager, CM&ES, DHWM
~~Jacqueline Kline~~, U.S. EPA, Region V



State of Ohio Environmental Protection Agency

J Box 1049, 1800 WaterMark Dr.
Columbus, Ohio 43266-0149
(614) 644-3020
FAX (614) 644-2329

George V. Voinovich
Governor

July 19, 1991

Re: Ekco Housewares, Inc.
OHD045205424
Stark County

Mr. Thomas Shingleton
Ekco Housewares, Inc.
359 State Avenue, N.W.
P.O. Box 560
Massillon, OH 44658

RECEIVED

AUG 28 1991

OFFICE OF RCRA
Waste Management Division
U.S. EPA, REGION V

Dear Mr. Shingleton:

Enclosed is the final report for the Comprehensive Ground Water Monitoring Evaluation (CME) conducted on February 7, 1991, at the Ekco Housewares, Inc.'s facility located in Massillon, Ohio.

The CME was conducted to determine the Ekco Housewares, Inc.'s compliance with the interim status standards for owners and operators of hazardous waste treatment, storage and disposal facilities, specifically rules 3745-65-90 through 3745-65-94 of the Ohio Administrative Code (OAC). The above noted OAC regulations pertain to ground water monitoring. The CME was conducted by Rich Kurlich of the Division of Ground Water. Karen Nesbit, Division of Solid and Hazardous Waste Management, was also present.

The CME report consists of several sections including background information and data on the facility's history and operation, a discussion of the hydrogeology, a description of the groundwater monitoring activities at the facility and various checklists and comments developed from these checklists.

A review of the CME revealed violations and deficiencies that are occurring or have occurred at the facility which are explained in the Compliance Status Summary section on pages 15 through 17 of the enclosed report.

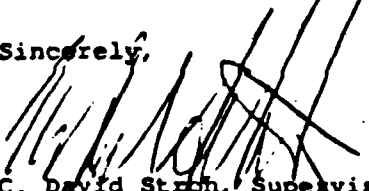
Please submit written documentation demonstrating what actions Ekco Housewares, Inc. has taken or intends to take to abate the violations and deficiencies explained in the enclosed report within thirty days of receipt of this letter to both me and Karen Nesbit of the Northeast District Office.



Mr. Thomas Shingleton
Ekco Housewares, Inc.
July 19, 1991
Page Two


If you have any questions, please contact Keith Dimoff at (614) 644-2934. Questions of technical nature should be directed to Rich Kurlich of the Division of Ground Water at (216) 425-9171.

Sincerely,



C. David Stron, Supervisor
Enforcement Unit
Hazardous Waste Enforcement Section
Division of Solid and Hazardous Waste Management

Reviewed by:



Pamela S. Allen, Manager
Hazardous Waste Enforcement Section
Division of Solid and Hazardous Waste Management

Sp.DS.PA.kd/lcn

cc: Tom Allen, DGW
Harry Courtright, NEDO, RCRA Group Leader
Carolyn Reiersen, HWES, DSHWM
Keith Dimoff, HWES, DSHWM
Chris Khourey/Rich Kurlich, DGW, NEDO
Sally Averill, USEPA

ATTACHMENT I

FINAL

INTERIM MEASURES REPORT
FOR EKCO HOUSEWARES, INC.
MASSILLON, OHIO

INTERIM MEASURES PLAN FOR
RECOMMENDED ADDITIONAL
INTERIM MEASURES

8 February 1988

Prepared By:

ROY F. WESTON, INC...
Weston Way
West Chester, Pennsylvania 19380



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SECTION 1**INTRODUCTION****1.1 INTERIM ACTIVITIES: PURPOSE AND SCOPE OF WORK**

The purpose of the interim activities was to address immediate concerns expressed by U.S. EPA, Region V, relating to potential impacts of contaminants in ground water on area water supplies. This information will also be used to develop a ground water assessment plan as a part of the closure plan for the Evaporation Lagoon facility (particularly, in reference to 40 CFR Section 265.93).

The tasks performed in the interim activities included:

- o Collecting and analyzing a water sample from the abandoned Ohio Water Service Company Well No. 4 for Target Compound List (TCL) volatile organics.
- o Reviewing area geology and ground water conditions and estimating the ground water flow directions within a one-mile radius of the facility based on the available geologic and hydrologic information.
- o Determining local ground water flow conditions and directions beneath the site.
- o Conducting a ground water utilization survey which identified and located potable and commercial water wells within a one-mile radius from the plants' facility.
- o Sampling of plant monitoring and production wells for Target Compound List (TCL) volatile organics.

The first three tasks were performed during the weeks of 31 August 1987 and 7 September 1987. The plant monitoring and production wells were sampled during the week of 21 September. These activities are further described in Section 2.

1.2 PLANT LOCATION

The EKCO Housewares, Inc. facility occupies approximately 13 acres on 3rd Street NW in the town of Massillon, Stark

County, Ohio. Figure 1 is a map of a portion of Stark County locating the site. The area surrounding the site is largely urban and industrial. The EXCO property is approximately 1,500 feet west of the Tuscarawas River and is bordered by Newman Creek to the north and Penn Central and Baltimore and Ohio Railroads to the west and east, respectively. Figure 2 illustrates the extent of the EXCO Housewares Property.

1.3 PLANT HISTORY

Since 1945, the Massillon EXCO Housewares facility has been manufacturing aluminum and stainless steel cookware. By 1951, with the United States involvement in the Korean Conflict, the plant was manufacturing 90mm and 105mm shell casings for the military. During this time, increase in production necessitated the drilling of two production wells (W-1 and W-2) at the facility. In approximately 1953, an evaporation lagoon was constructed along the northern property boundary adjacent to Newman Creek. Sludge from the waste treatment of the military production was discharged to the lagoon.

In 1969, with the development of new regulations and permit requirements, the evaporation lagoon was approved and permitted by the State of Ohio to discharge liquid waste products associated with plant activities. These waste products have included:

- o Deionizers from copper plating operations (hydrochloric acid and sodium hydroxide).
- o Washings and waste material from manufacturing porcelain-teslon coated aluminum cookware (aluminum frit, various coloring inorganics oxides, lead, cadmium, selenium, cobalt, and toluene).
- o Alkaline washer fluids to clean aluminum cookware.

Due to the discontinued manufacturing of aluminum porcelain cookware, the lagoon was not used after 1977 except for housing degreaser filter water in 1980 to mid-1984.

In March 1984, when the plant applied for a renewal of a NPDES Permit, the law required the analysis of on-site well water for volatile organic compounds (VOCs). The analysis

WESTON

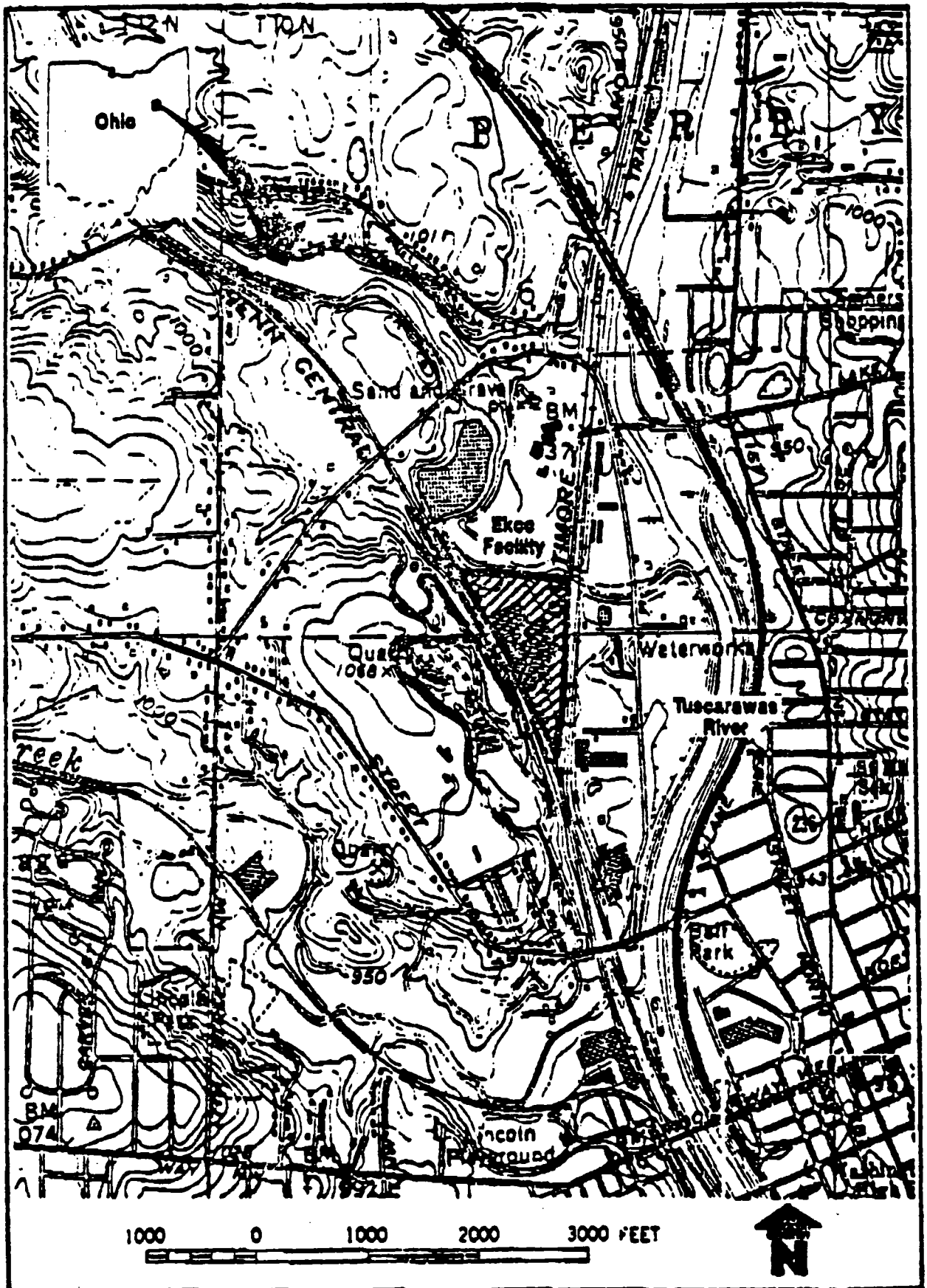


FIGURE 1 SITE LOCATION MAP
EKCO HOUSEWARES, INC., MASSILLON, OHIO
 (Rel. 7.5 Minute Massillon Quad, Ohio, 1978)

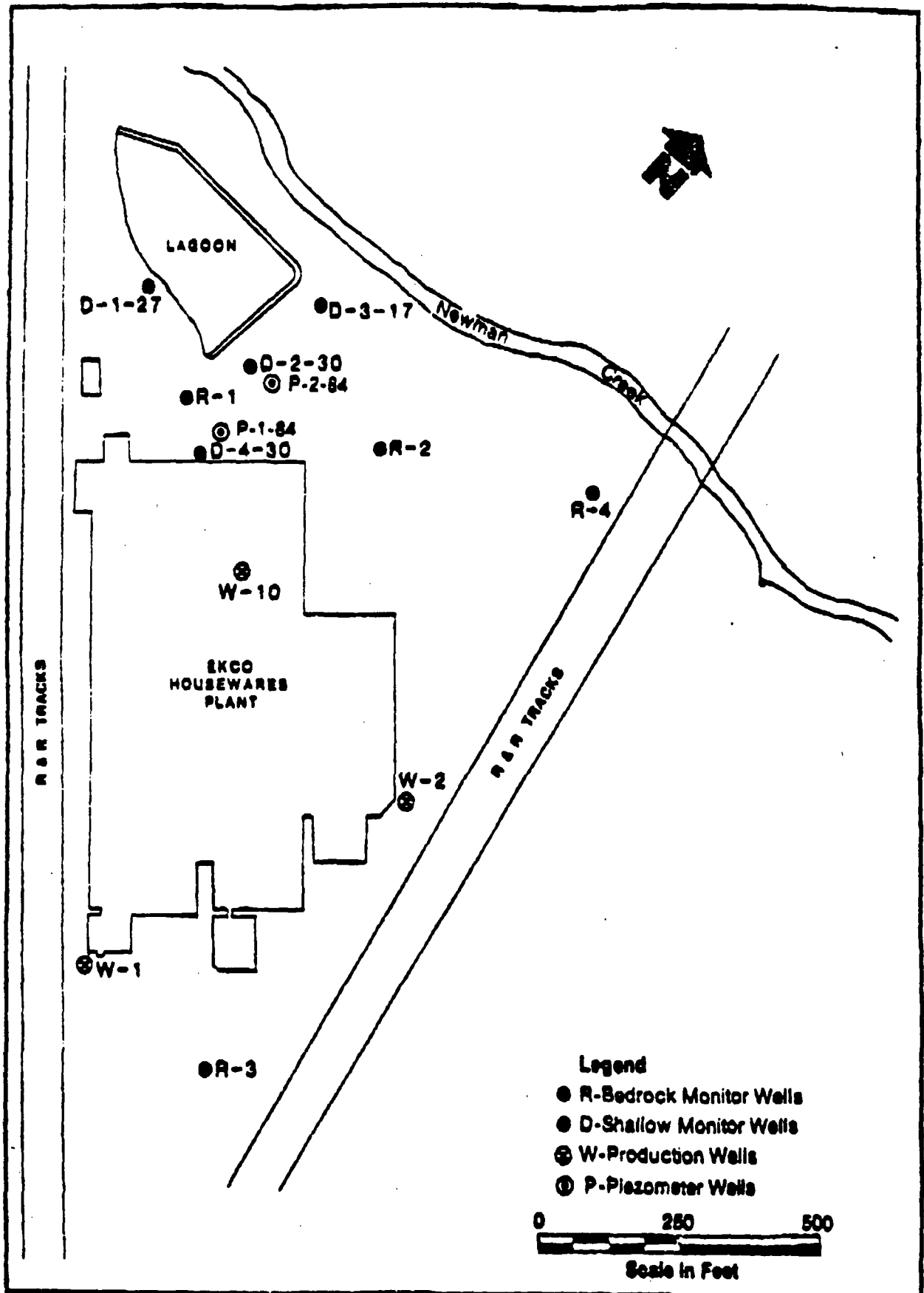


FIGURE 2 SITE DIAGRAM WITH LOCATIONS OF PRODUCTION AND MONITORING WELLS EKCO HOUSEWARES, INC., MASSILLON, OHIO

indicated 1,1,1 Trichloroethane (TCA) and Trichloroethylene (TCE). TCA and TCE have historically been used at the plant to clean both stainless steel cookware and metal bakeware.

In 1984, with the discovery of TCA and TCE in the ground water beneath the plant, four 6-inch bedrock monitoring wells and two 1 1/4-inch piezometers which were drilled into the overburden were installed at the site. The locations of these wells can be seen on Figure 2. The monitoring wells were sampled along with the three on-site plant production wells (W-1, W-2 and W-10) and a municipal production well located approximately 1,000 feet east of the plant (Ohio Water Service Company Well No. 4). Several volatile organic compounds on the EPA's Target Compounds List (TCL) were detected including TCE, TCA, vinyl chloride and dichloroethylene. The municipal well was subsequently taken out of service and converted to a 5-inch monitoring well. Four additional 1 1/2-inch monitoring wells were later installed into the overburden around the lagoon in January 1987.

Since early 1985, EXCO, with approval from the Ohio EPA, has conducted a ground water recovery program which includes continual pumping of ground water from two production wells and treatment of that water at an on-site air stripper. Some of this water is used in plant processes. Discharge is ultimately to Newman Creek under a NPDES permit. In their letter of 23 April 1985, Ohio EPA outlined reporting requirements for production well monitoring, air stripper emissions monitoring, monitor well sampling, water level monitoring, and city well sampling. The agency also stated that the cleanup of contaminated soils (outside of the lagoon) through natural flushing of the soils and eventual recovery of ground water is a "viable approach," if effective.

WESTON was retained to design and implement a ground water assessment plan for the Massillon EXCO site. The assessment would include an evaluation of contaminant migration and the immediate risk of off-site migration to downgradient wells.

SECTION 2**INTERIM ACTIVITIES**

Interim activities were conducted at the Massillon EXCO site to satisfy the interim objectives as stated in Section 1. The five work tasks are described in the following subsections.

**2.1 GROUND WATER SAMPLING OF OHIO WATER SERVICE
COMPANY WELL NO. 4**

A ground water sample was collected from Ohio Water Service Company abandoned Well No. 4 on 3 September 1987 and was analyzed for TCL volatile organic compounds.

Prior to sampling, specific information on well construction, was obtained from the Ohio Water Service Company. Originally, the well was 165 feet deep and the diameter and length of the screen was 18 inches and 40 feet, respectively. After abandonment, the well was completed as a 5-inch monitoring well cased to 140 feet and screened from 140 to 150 feet below ground surface. The annulus between the original and new screens was completely packed with pea gravel.

The specific procedures used to sample the well were as follows:

- o The submersible pump used to purge the well was pre-cleaned, prior to its arrival on-site, by pumping an Alconox wash followed by two potable water rinses through the unit. On the day of sampling, the unit received an additional tap water rinse followed by a deionized water rinse.
- o The depth to water was measured (18.75 feet below top of casing) and the volume of water in the well was determined for the purpose of purging.
- o The pump was lowered to a depth of 50 feet below top of casing so as to allow for drawdown during purging. The well was pumped for 45 minutes at a rate of 10 gallons per minute.
- o Since a pumping rate of 10 gallons per minute did not produce a significant drawdown, the pump was

raised to a depth of 20 feet below the top of the casing. This insured complete purging of the well by inducing water flow from the screen to pump intake level.

- o The well was pumped for a total of 5 hours giving a total evacuation volume of 3,000 gallons (3.8 well volumes).
- o Prior to sampling, a Teflon bailer was decontaminated using the same decontamination procedures as outlined for the submersible pump.
- o Clean, unused, polypropylene rope was tied to the end of the bailer and both were inserted into the well.
- o The following five samples for volatile organic analysis were collected:
 - #1 - well sample
 - #2 - duplicate well sample
 - #3 - field blank
 - #4 - matrix spike
 - #5 - matrix spike duplicate
- o A trip blank was prepared and provided by WESTON Analytical Laboratories. The blank traveled with the glassware to the site and with the samples during shipment.
- o Once collected and after insuring that no air bubbles were present, the samples were immediately placed on ice and entered on a chain of custody form to await shipment. The samples and chain of custody form were packaged according to D.O.T. regulations and shipped via Federal Express to WESTON Analytics, Lionville, Pennsylvania.

2.2 REGIONAL GROUND WATER FLOW CONDITIONS

Regional ground water flow directions were determined by obtaining references from the Ohio Department of Natural Resources. These references include publications of the following:

- o Regional geology and geologic maps.

- o Underground water resources for the basins and water sheds in the Massillon area.
- o Water quality and use in Ohio.
- o Surface drainage maps of Ohio.
- o Soil survey for Stark County.
- o Low flow frequencies and storage requirements for Ohio streams.
- o Ground water levels in Ohio.

2.3 LOCAL GROUND WATER FLOW CONDITIONS

The ground water flow direction beneath the site was determined by:

- o Identifying the relative elevation at the top of the inner casing of all on-site production and monitoring wells.
- o Measuring the depth to water from the top of the inner casing.
- o Calculating the elevation of the ground water beneath the site.
- o Contouring points of equal elevation of the ground water beneath the site.

2.4 GROUND WATER USE WITHIN THE STUDY AREA

Potable water wells and industrial-use wells within a one-mile radius of the site were identified with the help of:

- o Well records filed at the Ohio Department of Natural Resources for the permitted wells within the study area.
- o An interview with a local well drilling firm. If available, well logs, well construction diagrams, and well locations for all the wells in the study area that the drilling firm had installed were obtained.

- o A visit to the Ohio Water Service Company which revealed locations of residences who do not use public water within a one-mile radius of the site. The water company also provided information on the municipal, industrial and commercial wells within a one-mile radius of the site.
- o A 1985 aerial photograph. Residential houses surrounding the site were located from the photograph to a county tax map. The map was provided to the Ohio Water Service for confirmation of the presences or absence of domestic wells at the specified locations.

2.5 MONITORING AND PRODUCTION WELL SAMPLING ON THE EXCO PROPERTY

The monitoring wells (R-1 thru R-4, D-1-27, D-2-30, D-3-17, D-4-30, W-1 and W-10) at the Massillon EXCO site were sampled on 23 September 1987 in order to obtain baseline information for the development of the Ground Water Assessment Plan. The ground water samples were analyzed for full TCL parameters.

The specific procedures used to sample wells D-1-27 thru D-4-30 were as follows:

- o The depth to water was measured and the volume of water in the wells was determined for the purpose of purging.
- o The dedicated bailers in the wells were used to evacuate three well volumes.
- o Purge water was placed in an on-site tanker.
- o The wells were allowed to recover overnight.
- o Samples were taken directly from the dedicated bailers.

The specific procedures used to sample wells R-1 thru R-4 were as follows:

- o The depth to water was measured and the volume of water in the wells was determined for the purpose of purging.

- o The dedicated pumps in the wells were turned on and three well volumes were evacuated.
- o Purge water was discharged directly into an on-site tanker.
- o The wells were allowed to recover overnight.
- o Samples were taken directly from the pump outlets.

The specific procedures used to sample production wells W-1 and W-10 were as follows:

- o The depth to water was measured.
- o Since the wells are continuously running, no purging was necessary.
- o Samples were taken directly from the well tap.

SECTION 3**RESULTS OF THE INTERIM ACTIVITIES****3.1 RESULTS OF OHIO WATER SERVICE COMPANY WELL NO. 4
GROUND WATER SAMPLE**

The results of the sample collected on 3 September 1987 from the Ohio Water Services Company well No. 4 are shown in Table 1. This table also contains the QA/QC sample results (the sample duplicate, matrix spike, matrix spike duplicate, field blank and trip blank, respectively). The quantification of volatiles was by the purge and trap GC-Hall detection method as described in EPA Method 601.

3.2 REGIONAL PHYSIOGRAPHY, SOILS, GEOLOGY AND HYDROLOGY

Stark County lies within the Muskingum River basin and within the Allegheny Plateau province in its entirety. The line of glaciation marking the farthest southward advance of the ice sheets extends to the southern edges of the county. The glaciated area is generally gently rolling with some flat topography.

The soils in the area belong to the Chili-Wheeling-Shoal association which formed in silty deposits underlain by sands and gravels. They are light colored and well drained soils and are nearly level to gently sloping. Just west of the site lies relatively thick, permeable glacial deposits of sand and gravel along the Tuscarawas River. Yields of more than 1,000 gallons per minute have been developed from wells installed in these deposits.

The bedrock beneath the area consists of interbedded sandstones and shales belonging to the Pottsville group of Pennsylvanian age. The bedrock dips generally to the southeast at about 20 to 40 feet per mile. Yields of as much as 500 gallons per minute have been reported from this bedrock, however, regional yield seldom exceeds 15 gallons per minute.

Figure 3 illustrates the water resources in the area surrounding the site. Since bedrock dips toward the southeast and the Tuscarawas River lies approximately 1,500 feet southeast of the site, the regional ground water flow

TABLE 1

**RESULTS OF 3 SEPTEMBER 1987 OHIO WATER SERVICE COMPANY
WELL NO. 4 GROUND WATER SAMPLE
(ug/l)**

	WELL #4	WELL #4 DUP	WELL #4 MATRIX SPIKE	WELL #4 MATRIX SPIKE DUP	FIELD BLANK	TRIP BLANK
Benzene	4.6	4.7	901	971	---	---
Chloroform	---	---	---	---	3.2	3.1
Tetrachloroethene	---	---	1.8	1.8	---	---
Trichlorofluoromethane	1.2	1.3	1.2	1.2	1.5	1.3
Vinyl Chloride	2.5	2.9	2.3	2.5	---	---

--- = Analyzed, not detected

WESTERN

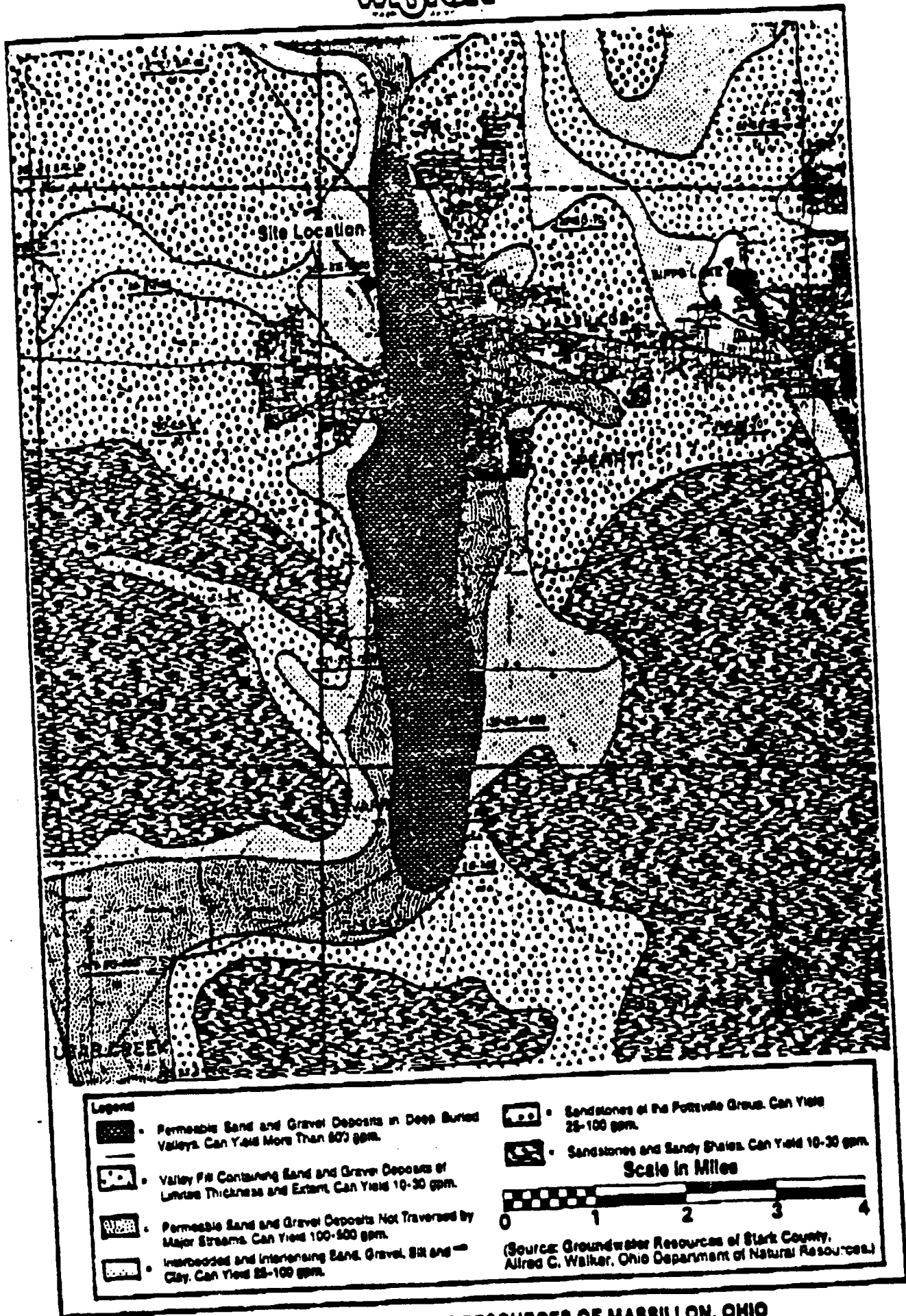


FIGURE 3 GROUNDWATER RESOURCES OF MASSILLON, OHIO

direction is to the southeast towards the Tuscarawas River. Ground water that discharges from the bedrock aquifers to the buried glacial sediments would have a southern flow component, approximately parallel to the flow of the Tuscarawas River.

3.3 LOCAL GROUND WATER FLOW DIRECTION

The water level data indicates that the ground water beneath the site lies in two distinct zones;

- o The ground water piezometric surface in Zone 1 occurs from 8 to 26 feet below the ground surface in the wells installed in the unconsolidated sediments.
- o The ground water piezometric surface in Zone 2 occurs from 22 to 52 feet below the ground surface in the wells installed in the Pottsville Sandstone.

Analysis of the ground water elevations in the shallower wells (Zone 1) indicates that the ground water flow direction is to the southeast, parallel to Newman Creek and towards the Tuscarawas River.

Figure 4 was generated using the ground water elevations for the wells installed in the Pottsville Sandstone. From this, it is difficult to determine the natural ground water flow direction because the major withdraws from W-1 and W-10 are causing a cone of depression and the ground water to flow radially toward the center of the site (to W-10).

3.4 IDENTIFICATION AND LOCATION OF GROUND WATER SUPPLY WELLS WITHIN A ONE-MILE RADIUS OF THE SITE

The known or inferred locations of potable water wells within a one-mile radius of the site were identified and are located in Figure 5. Included in this figure are areas where domestic wells are most likely to be present, and locations of commercial, and municipal wells. Written opinion concerning the absence of potable wells lying between the river and the areas just south, southeast and east of the site was obtained from the Ohio Water Service Company (see Attachment A).

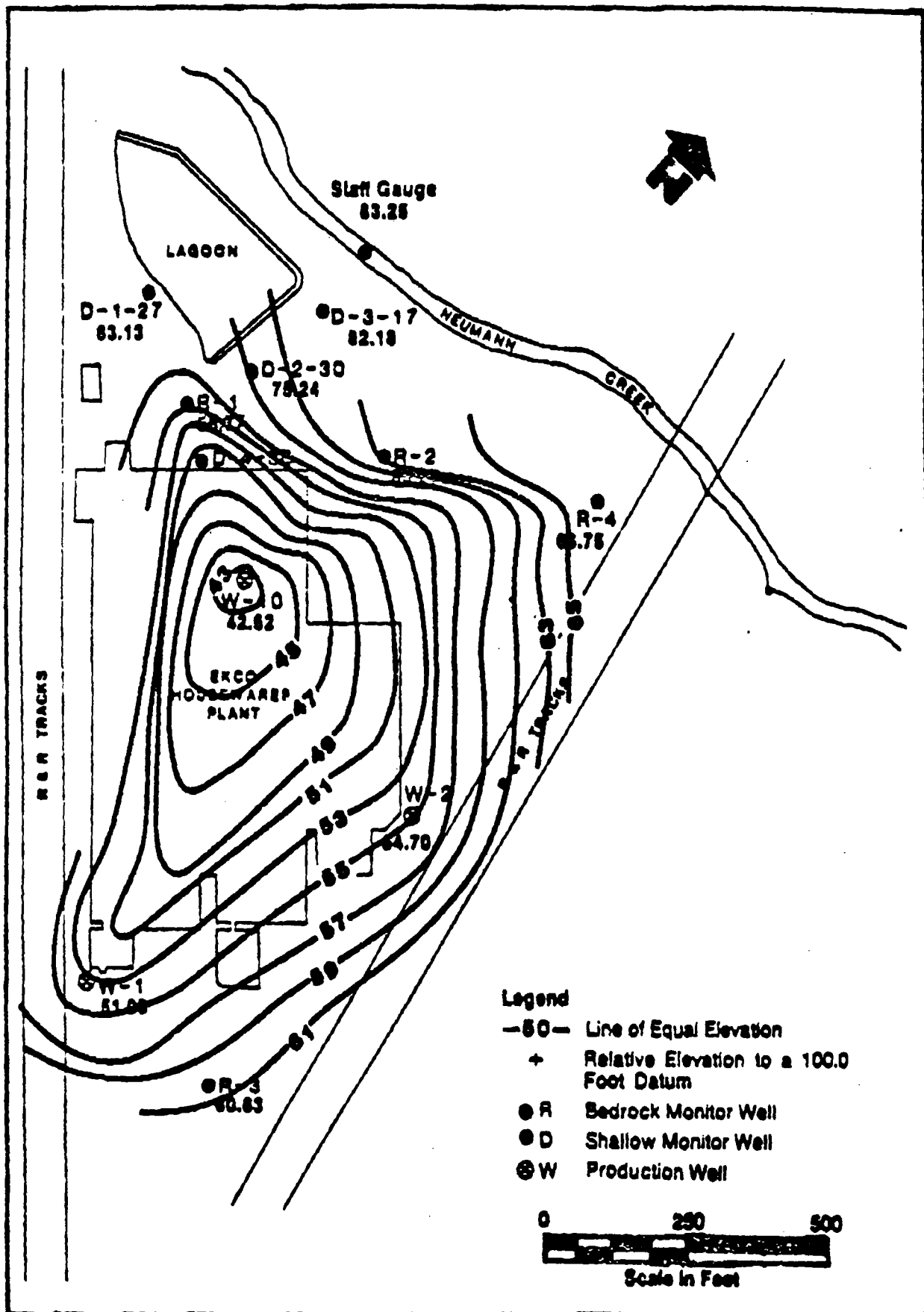


FIGURE 4 CONTOUR OF BEDROCK GROUNDWATER ELEVATIONS +
EKCO HOUSEWARES, INC., MASSILLON, OHIO

Formerly
Eachman Welding Co.

EKCO
Facility

Cleaners
Hanger Co.
Eaton
Corp.

Heights

Highland

Ciderlaw

Randall High

Charles Roger

Since ground water is generally flowing to the southeast, it can be seen from Figure 4 that only two commercial wells lying approximately 2500 feet south of the site are potential receptors of contamination migration.

When comparing Figures 3 and 5, it can be seen that the Ohio Water Service production wells draw from a highly permeable sand and gravel aquifer and have the capability of yielding over 500 gallons per minute. The locations of the downgradient commercial production wells directly overlie interbedded and interlensing, less permeable sands, gravels, silts and clays which yield only 25 to 100 gallons per minute. Finally, the areas containing residential wells overlie the sandstones of the Pottsville group and valley fill sand and gravel deposits. These latter water bearing units have the capacity of yielding between 10 and 100 gallons of water per minute.

3.5 RESULTS OF PRODUCTION AND MONITORING WELL SAMPLES ON THE EKCO PROPERTY

The results of the 23 September 1987 plant production and monitoring well sampling can be seen in Table 2. Figure 6 illustrates the concentrations of total volatile organic compounds, TCE and vinyl chloride in the corresponding wells.

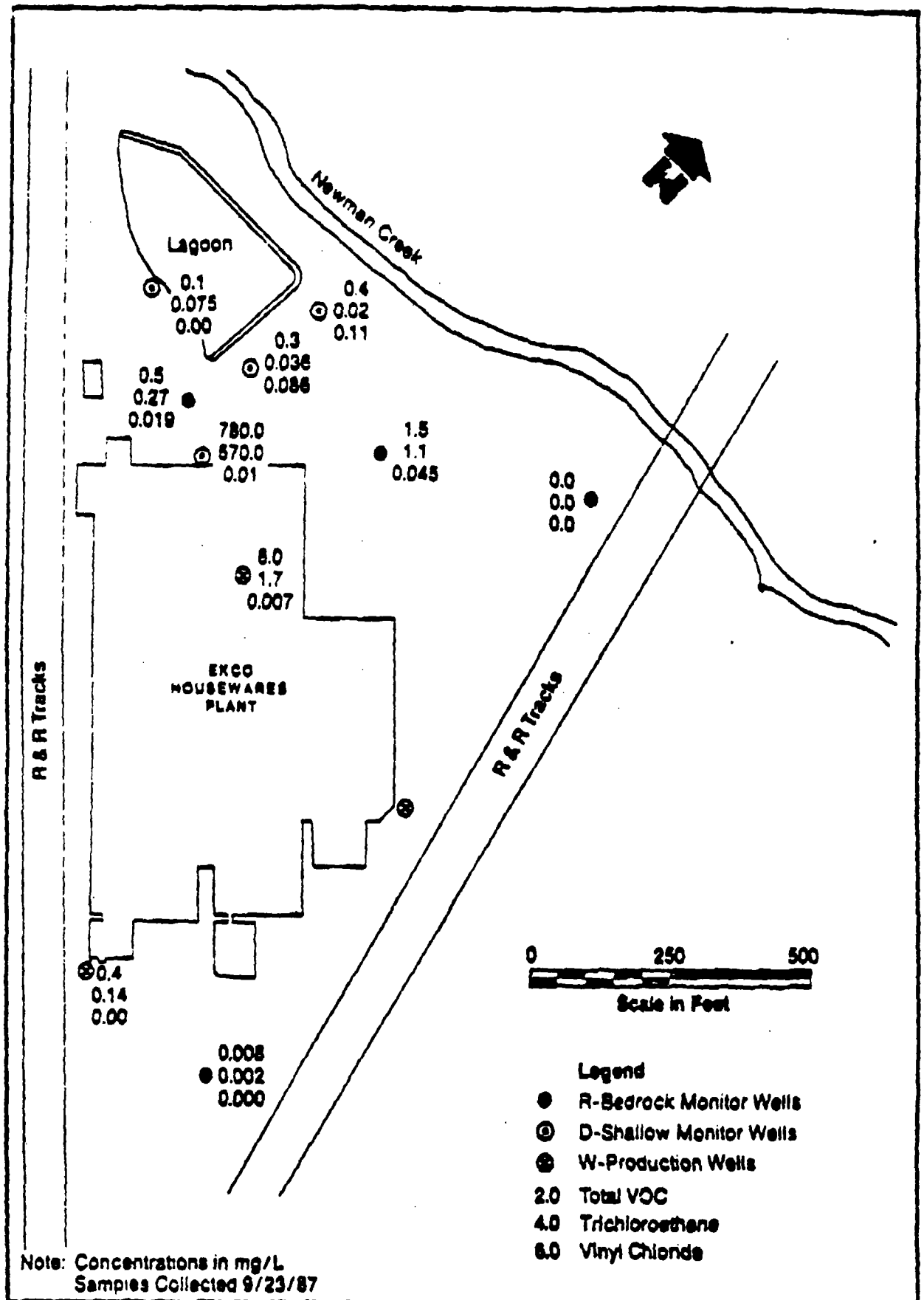
TABLE 2

RESULTS OF 23 SEPTEMBER 1987 PRODUCTION AND MONITORING WELL
 SAMPLES AT THE ECHO SITE
 (ug/l)

	R-1	R-2	R-3	R-4	R-5	M-1	M-10	M-100	D-1-2	D-2-10	D-3-17	D-4-18
Acetone		12						110				26
2-Butanone												95
Carbon Disulfide												13
Carbon Tetrachloride												220
Chloroform												13
Chloroethane												23
1,1-Dichloroethane	15		4J			130	100	160	4J	97	160	6400
1,2-Dichloroethane		75						5				100
1,1-Dichloroethane	6	11				16	160	110		5	13	20000
Methylene Chloride	3JB	3JB	4JB	4JB	3JB	3JB	4JB	50	3JB	3JB	3JB	190
Toluene							1J	2J				
Trans-1,2-Dichloroethane	65	200				17	110	84	4J	100	54	210
1,1,1-Trichloroethane	80	41	2J			100	3800	4500	10	9	10	180000
Trichloroethane	270	1100	2J			140	1700	2100	750	36	16	57000
1,1,2 Trichloroethane												130
Vinyl Chloride	19	45					7J			86	110	10

J = Indicates an estimated value

B = Indicates that the analyte was detected in the blank and sample



**FIGURE 6 VOLATILE ORGANIC COMPOUNDS (VOC)
GROUNDWATER SAMPLING ANALYTICAL RESULTS
EKCO HOUSEWARES, INC., MASSILLON, OHIO**

SECTION 4**CONCLUSIONS AND RECOMMENDATIONS**

The major purpose of the Interim Report is to determine whether an immediate risk to human health exists because of known or potential ground water contamination associated with the EXCO plant. Based on the results presented in the previous section the following conclusions are made:

- o HSL volatile organic compounds were identified beneath the facility. No other HSL compounds were found in elevated concentrations in the on-site wells.
- o The sample from Ohio Water Service Well Number 4 contained low concentrations (<10 ug/l) of volatile organic vinyl chloride, trichlorofluoromethane and benzene. The source of these compounds is not presently known.
- o No present ground water use for potable supply was identified within one mile downgradient of the EXCO facility. However, the upgradient Ohio water service wells 1, 2, 3 have recently increased total withdrawal to as much as 6.5 mgd.
- o Present pumping of W-10 at the EXCO plant is providing at least partial containment of the plume. The degree of contamination is not known.

Based on these findings, hydraulic containment will be maximized as an interim measure prior to the execution of the full ground water assessment. EXCO has determined that it is possible to increase pumping at W-10 which in now pumping at a rate much lower than stripper capacity. The well has been tested to determine what increased capacity it can maintain. Installation of a 400 gpm pump is underway by EXCO. Completion is expected by the end of February, 1988.

Three piezometers will be installed to monitor water levels and determine the hydraulic gradient in the unconsolidated sediments between the plant and Ohio Water Service Wells 1, 2, and 3. Installation of these piezometers is dependent upon securing access to the necessary adjacent property. Certified letters have been sent to the property owners requesting access. No positive responses have yet been received.

Piezometers will be constructed of 2-inch diameter screen and riser with 20 feet of stainless steel screen set 15 feet into the water table. The top of the casings will be surveyed for elevation. Locations are:

- o One piezometer adjacent to monitor well R-4.
- o One piezometer approximately 500 feet north of R-4, in line with Ohio Water Service Company Well Numbers 1, 2, and 3.
- o One piezometer between R-4 and Ohio Service Well 4.

Attachment B contains a detailed discussion of the proposed piezometer construction.

Lastly, in response to the above noted conditions and agency concerns, water supply wells 1, 2, 3, and 5 will be sampled for VOC's. Sampling will be on a monthly basis, until the ground water assessment indicates that no impact to these wells exists from the EKCO property.

A schedule for implementation of these additional measures is attached as Attachment C.

REFERENCES

- o Inventory of Ohio Soils, Stark County Progress Report No. 29, Ohio Department of Natural Resources, 1968.
- o Ohio Water Plan Inventory, Middle Tuscarawas River and Sugar Creek Basins, Under Ground Water Resources, James J. Schmidt, 1962.
- o Flow Duration of Ohio Streams, Report No. 3 Ohio Water Plan Inventory, Department of Natural Resources, William Cross, 1959.
- o Northeast Ohio Water Plan, Main Report, Ohio Department of Natural Resources, 1972.

ATTACHMENT

RECEIVED

OCT 12 1987

GEOSCIENCES DEPT

OHIO WATER SERVICE COMPANY

123 THIRD STREET S.E.
P.O. BOX 184
MARIETTA, OHIO 44848

October 8, 1987

Mr. L. Sherrard Steele, Geologist
Geosciences Dept.
Weston Managers
Weston Way
West Chester, PA 19380

Dear Mr. Steele:

In response to your letter of October 5, 1987 I have compiled the enclosed list of address within the areas marked on your maps. This was compiled from our water service account records and a little field checking.

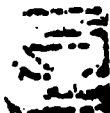
It should be noted that although all the buildings on the list, except one, have water service accounts, there is a very remote possibility that some of them may have a private well as a second source of water. A few of the names marked on your maps are on vacant lots. All residences within the areas marked have been included on my list.

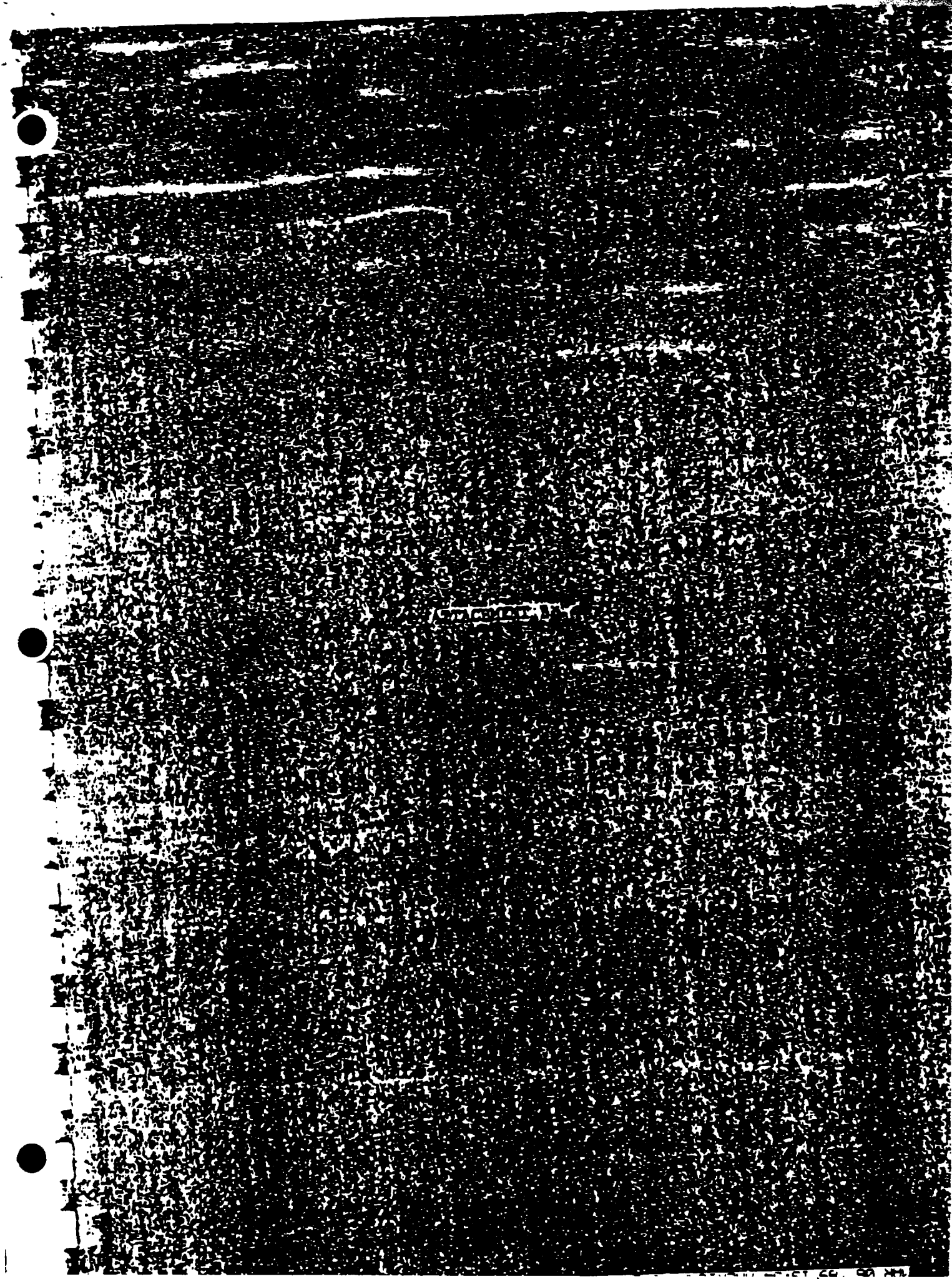
Sincerely,

Donald L. Snyder

Donald L. Snyder
Supervisor of Plans & Estimates

AN AFFILIATE OF





PIEZOMETER WELL INSTALLATION**EKCO HOUSEWARES, INC.****INTRODUCTION**

A total of three (3) piezometer wells will be installed at the EKCO Housewares facility as part of the Phase II site work. The purpose of these wells is to provide information for the interpretation of ground water flow between Ohio Water Service wells 1, 2, 3 and the EKCO facility. These data are required for completion of the Corrective Measures Study presently ongoing.

MONITOR WELL LOCATIONS

The locations of the existing monitor and proposed piezometer wells at the EKCO facility are shown on Figure 1. At each location the wells will intercept the water table and will be completed to approximately 35 to 40 feet below grade.

WELL CONSTRUCTION

Figure 2 present a generalized diagram of the piezometer well construction. The wells will be constructed of 2-inch stainless steel wound wire screens and low carbon steel riser pipes. All wells will be installed with a suitable siliceous gravel/sand pack and a bentonite seal. The piezometer will be grouted from the top of the seal to the surface. The well screens will be set approximately three feet above the water table. Each well will have a protective black iron surface casing with a lockable cap. All connections will be screw type and joints will be flush. Only vegetable oil will be used, sparingly, if threads require lubrication. Final depth of each well will be determined by the on-site WESTON geologist.

DRILLING AND WELL INSTALLATION METHODS

The piezometer wells will be installed using hollow stem augers. Split spoon samples (ASTM D1557) for physical description of the sediments will be obtained at five foot intervals at each piezometer location. The on-site geologist will maintain drilling logs and record sediment descriptions. No drilling fluids will be used with the exception of limited amounts of potable water if running sand conditions are encountered.

The total depth of each boring will be determined by WESTON's on-site geologist. At the determined depth, the well screen and riser will be installed and the augers withdrawn to the top of the screen. In this sandy aquifer, natural sand pack will be desirable. However, silica sand will be used to backfill the annular space if natural collapse has left voids after the augers are withdrawn. When plumbing the hole indicates that the sand pack is at the desired height, a bentonite seal will be set as the augers are gradually withdrawn to ensure no further collapse of the borehole. After the bentonite seal is set, the remaining annular space will be grouted with a cement/bentonite (20:1) mix. The grout will be pumped through the augers as they are withdrawn insuring that no collapse occurs. After completion, the grout will be checked for settlement and more grout added, if necessary. The upper 2.5 feet of the annular space will be filled with a cement/sand mix and the protective casing set as shown in Figure 2.

Soil cuttings from the drilling are not expected to be contaminated. Cuttings will be spread at the site or will be removed from the site in order to leave the area in a neat condition.

DECONTAMINATION

The drilling rig, equipment and materials will arrive on site in clean condition. Prior to the start of the drilling, all drill rods, augers, tools, and split spoons will be steam cleaned at an area on-site designated for this purpose. Only potable water will be used. Well screens and pipes will also be cleaned and inspected to ensure that all residue such as machine oils has been removed. At the drilling site, plastic sheeting will be laid down under well pipe and screens to avoid ground contact. Care will be taken to keep all equipment clean before it enters the hole.

Between wells, the development pumps will be cleaned between wells by pumping through a detergent/water solution and then a clear rinse water.

DEVELOPMENT

Each well will be developed with a submersible or suction pump until a steady flow of clear water is obtained and until at least five well volumes are removed. The pump hose shall be capable of reaching the base of the screens and orifice will be moved through the length of the screen during development. Based on experience with other monitor

wells at the site, an adequate flow of water is expected to maintain a sufficient head in all wells. However, if a sufficient head cannot be maintained during pumping, purging using a bailer and surge block method may be required.

SAFETY

Ground water contamination is known to be from volatile organics, primarily TCE and TCE in the part per million range. All monitor wells to be installed in this phase, however, are located outside of the plant process area where no soil contamination is anticipated or next to an uncontaminated on-site monitor well. Therefore a level D safety level will be in effect. This includes safety boots, work gloves, overalls and hard hats. Air monitoring however, will be done and, if organics are detected, work will be performed in Level C.

ATTACHMENT C

SCHEDULE FOR IMPLEMENTATION OF ADDITIONAL
INTERIM MEASURES, EKCO PLANT,
MASSILLON, OHIO

ATTACHMENT C**SCHEDULE FOR IMPLEMENTATION OF ADDITIONAL
INTERIM MEASURES, EKCO PLANT,
MASSILLON, OHIO****Schedule**

1. Increased pumpage of W-10:
 - A. Receive 400 gpm pump - week of 3/7/88
 - B. Install new pump - week of 3/14/88
 - C. Pump test to establish optimum pump rate - weeks of 3/21/88 and 3/28/88
 - D. Operational - week of 4/4/88
2. Sampling of Ohio Water Company well #1, 2, 3, and 5:
 - A. Begin monthly sampling of wells - week of 2/8/88
 - B. Sample monthly - second week of each month
 - C. Reassess sampling schedule after receipt of three round of analytical results
3. Installation of 3 piezometers
 - A. Obtain access to neighboring properties: If access cannot be obtained by EKCO by 1 March, USEPA will be requested to assist in obtaining access
 - B. Mobilize well drillers - within 3 weeks of obtaining property access
 - C. Drilling and installation - 1 week
 - D. Survey and water level measurements - 1 week following installation

ATTACHMENT II

SCOPE OF WORK FOR A RCRA FACILITY INVESTIGATION AT EKCO HOUSEWARES, INC.

PURPOSE

The purpose of this RCRA Facility Investigation (RFI) is to evaluate the nature and extent, if any, of releases of hazardous waste or hazardous constituents from solid waste management units and other source areas at the facility and to gather necessary data to support the Corrective Measures Study. Respondent shall furnish all personnel, materials, and services necessary for, or incidental to, performing the RCRA Facility Investigation at EKCO Housewares, Inc., Massillon, Ohio Plant (the "facility").

SCOPE

The RCRA Facility Investigation consists of six tasks:

- Task I: Description of Current Conditions
- Task II: Pre-Investigation Evaluation of Corrective Measures Technologies
- Task III: RFI Workplan Requirements
- Task IV: Facility Investigation
- Task V: Investigation Analysis
- Task VI: Reports

TASK I: DESCRIPTION OF CURRENT CONDITIONS

Respondent shall submit for U.S. EPA approval a report providing the background information pertinent to the facility and suspected contamination as set forth below. The data gathered during any previous investigations or inspections and other relevant data shall be included.

A. Facility Background

The Respondent's report shall summarize the regional location, pertinent boundary features, general facility physiography, hydrogeology, and historical use of the facility for the treatment, storage, or disposal of solid and hazardous waste. Respondent's report shall include:

1. Map(s) depicting the following:
 - a. General geographic location;
 - b. Property lines with owners of all adjacent property clearly indicated;

- c. Topography waterways, all wetlands, floodplains, water features, drainage patterns;
- d. All tanks, buildings, utilities, paved areas, easements, rights-of-way, wells, and other significant features;
- e. All solid or hazardous waste treatment, storage, or disposal areas active after November 19, 1980.
- f. All known past solid or hazardous waste treatment, storage, or disposal areas regardless of whether they were active on November 19, 1980;
- g. All known past and present product and waste underground tanks or piping;
- h. Surrounding land uses (residential, commercial, agricultural, recreational).

All maps shall be consistent with the requirements set forth in 40 CFR 270.14 and be of sufficient detail and accuracy to locate and report all current and future work performed at the site.

- 2. A history and description of the ownership and operation, solid and hazardous waste generation, treatment, storage, and disposal activities at the facility.
- 3. Approximate dates or periods of past product and waste spills or deposits, if any, identification of the materials spilled or deposited, the amount spilled or deposited, and the location where spilled or deposited.
- 4. A summary of past and present environmental permits requested and/or received, any enforcement actions and their subsequent resolutions, and a list of documents prepared for this facility.

B. Nature and Extent of Contamination

Respondent shall prepare a preliminary report describing the existing information on the nature and extent of contamination.

- 1. Respondent's report shall summarize source areas of contamination. This, at a minimum, should include all solid waste management units and other suspect source areas. For each area Respondent shall identify the following:
 - a. Location of unit/area (which shall be depicted on a facility map).
 - b. Estimated quantities, if any, of potentially contaminated materials.
 - c. Hazardous constituents known to be present.

- d. Identification of areas where additional information is needed.
2. Respondent shall prepare an assessment and description of the existing degree and extent of contamination, if any. This should include:
 - a. Available monitoring data and qualitative information on locations and levels of contamination at the facility.
 - b. All potential migration pathways including information on geology, hydrogeology, physiography, hydrology, water quality, and meteorology.
 - c. All potential receptors, to include impacts on human health and the environment, demography, groundwater and surface water use and land use.

C. Interim Measures

Respondent shall document interim measures that were or are being undertaken at the facility per the final Interim Measure Report (WESTON, January 1988). This shall include:

1. Objectives of interim measures;
2. Specifications, construction, operation and maintenance requirements;
3. Schedules for design, construction and monitoring;
4. Schedules for progress reports.

TASK II: PREINVESTIGATION EVALUATION OF CORRECTIVE MEASURES TECHNOLOGIES

Prior to starting the facility investigation, the Respondent shall submit to U.S. EPA a report that identifies potential corrective measure technologies in two categories: groundwater corrective measures and source corrective measures. The report shall identify the field data collection needs of the following technologies:

A. Groundwater Corrective Measures Technologies

- Present recovery and treatment system.
- Modification of recovery and treatment system, including alternative recovery scenarios (i.e., recovery well pumping rates and well locations and depths) and additional supplementary air or water polishing treatment to remain in compliance with present or future permit conditions.

B. Source Corrective Measure Technologies

- Raw materials and waste handling modifications.
- Operations modification.
- No action (i.e., natural flushing).
- In situ vapor extraction.
- Biological treatment.

- Removal and offsite disposal.
- Onsite encapsulation.
- Low temperature thermal treatment.
- Soil washing or flushing.

TASK III: RFI WORKPLAN REQUIREMENTS

Respondent shall prepare an RFI Workplan in addition to the Groundwater Assessment Plan, submitted pursuant to the PCAFO, for the EKCO Massillon, Ohio Site (WESTON, January 1988). The RFI Workplan shall include the development of several subplans that will be prepared concurrently. The RFI Workplan shall include the following:

A. Project Management Plan

Respondent shall prepare a Project Management Plan that will include a discussion of the technical approach, schedules, and personnel. The Project Management Plan will also include a description of the qualifications of personnel performing or directing the RFI, including contract personnel. This plan shall also document the overall management approach to the RCRA Facility Investigation.

B. Data Collection Quality Assurance Plan

Respondent shall prepare a plan to document monitoring procedures, sampling, field measurements, and sample analysis performed during the investigation to characterize the environmental setting, source, and contamination, if any, so as to ensure that all information, data, and resulting decisions are technically sound, statistically valid, and properly documented.

The Data Collection Quality Assurance Plan shall be consistent with guidance issued under RCRA and other appropriate regulations and shall include a description of:

1. Data Collection strategy
2. Sampling strategy
3. Field measurements
4. Sample analysis

C. Data Management Plan

Respondent shall develop and initiate a Data Management Plan in accordance with applicable U.S. EPA Guidance Documents to document and track investigation data and results. This plan shall identify and set up data documentation materials and procedures, project file requirements, and project-related progress reporting procedures and documents. The plan shall also provide the format to be used to present the raw data and conclusions of the investigation.

D. Health and Safety Plan

Respondent shall prepare a Health and Safety Plan.

1. Major elements of the Health and Safety Plan include:
 - a. Facility description, including availability of resources such as roads, water supplies, electricity, and telephone services.
 - b. Description of the known hazards and evaluation of the risks associated with the incident and with each activity conducted.
 - c. List of key personnel and alternates responsible for site safety, response operations, and protection of human health.
 - d. Description of levels of protection to be worn by personnel.
 - e. Delineation of work area.
 - f. Procedures to control site access.
 - g. Description of decontamination procedures for personnel and equipment.
 - h. Site emergency procedures.
 - i. Emergency medical care for injuries and toxicological problems.
 - j. Description of requirements for an environmental surveillance program.
 - k. Routine and special training required for responders.
 - l. Procedures for protecting workers from weather-related problems.
 - m. Emergency procedures.
2. The Facility Health and Safety Plan shall be consistent with:
 - a. NIOSH Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities (1985)
 - b. U.S. EPA Order 1440.1 - Respiratory Protection
 - c. U.S. EPA Order 1440.3, Health and Safety Requirements for Employees Engaged in Field Activities
 - d. Facility Contingency Plan
 - e. U.S. EPA Standard Operating Safety Guide (1984)
 - f. OSHA regulations particularly in 29 CFR 1910 and 1926
 - g. State and local regulations

E. Community Relations Plan

The respondent shall provide appropriate assistance and expertise for the dissemination of information to the public regarding investigation activities and results.

TASK IV: FACILITY INVESTIGATION

Respondent shall conduct those investigations necessary in accordance with applicable U.S. EPA guidance to: characterize the facility (Environmental Setting); define the sources, if any, (Source Contamination); define the degree and extent of contamination, if any (Contamination Characterization); and identify actual or potential receptors (Potential Receptor Identification).

The investigations should result in data of adequate technical content to support the development and evaluation of the corrective measure alternative(s) during the Corrective Measures Study.

The site investigation activities shall follow the RFI Workplan, the Groundwater Assessment Plan (submitted to U.S. EPA December 1987, pursuant to the Partial Corrective Action Order) for the EKCO Massillon, Ohio Site, and the subplans set forth in Task III. All sampling and analyses shall be conducted in accordance with the Data Collection Quality Assurance Plan. All sampling locations shall be documented in a log and identified on a detailed site map. The information and data developed during the implementation of the Groundwater Quality Assessment Plan shall be used in, and form the basis for, facility investigation activities. The sampling and analytical techniques used during the implementation of the Groundwater Quality Assessment Plan will be in accordance with Contract Laboratory Program, Quality Assurance Standards.

A. Environmental Setting

Respondent shall collect information to supplement and verify existing information on the environmental setting at the facility.

B. Source Characterization

Respondent shall collect analytical data to characterize the wastes, if any, and the areas where wastes may have been placed, collected or removed, including: type; quantity; physical form; disposition (containment or nature of deposits); and facility characteristics affecting release (e.g., facility security, engineered barriers). The data generated from the contaminant source characterization activities performed in accordance with Section 3.2 of the Groundwater Assessment Plan for the EKCO, Massillon, Ohio site shall provide the basis for, and be used in the source characterization activities performed pursuant to this RFI Scope of Work. Respondent recognizes that additional work may be necessary to complete the source characterization.

C. Contamination Characterization

Respondent shall collect analytical data on groundwater, soils, surface water, sediment and subsurface vapor in the vicinity of the facility. These data shall be sufficient to define the extent, origin, direction, and rate of movement of contaminant plumes associated with solid waste management units. Data shall include time and location of samplings, media sampled, concentrations of contaminants found, weather conditions during sampling, and identities of the individuals performing the sampling and analysis. The data generated from the contamination characterization activities performed in accordance with Section 3.2 of the Groundwater Assessment Plan for the EKCO, Massillon, Ohio site shall provide the basis for, and be used in the contamination characterization activities performed pursuant to this RFI Scope of Work. Respondent recognizes that additional work may be necessary to complete the contaminant characterization. Respondent shall address the following types of contamination at the facility:

1. Groundwater Contamination

Respondent shall conduct a groundwater investigation for the EKCO Massillon, Ohio Site to characterize plumes of contamination at the facility, if any, emanating from solid waste management units. The scope of the Groundwater Assessment Plan includes:

- a. A description of the horizontal and vertical extent of any immiscible or dissolved contaminant plume(s), if any, originating from the facility.
- b. The horizontal and vertical directions of contamination movement, if any.
- c. The velocities of contaminant movement, if any.
- d. The horizontal and vertical concentration profiles, if any, of select Appendix VIII constituents (volatile organic compounds and heavy metals) in the plume(s).
- e. An evaluation of factors influencing the potential plume movement.
- f. An extrapolation of future contaminant movement, if any.

Respondent shall document the procedures to be used in making the above determinations (e.g., well design, well construction, geophysics, modeling, or other methods utilized) in the workplan.

2. Soil Contamination

An investigation shall be performed of soil contamination, if any, beneath the facility. This investigation shall provide the following information:

- a. A description of the vertical and horizontal extent of contamination, if any.
- b. A description of contaminant and soil chemical properties within the contaminant source area, if any.
- c. Specific contaminant concentrations, if any.
- d. The contaminant movement or migration, if any.
- e. The potential impact of contaminant movement from the unsaturated zone.

Respondent shall document the procedures used in making the above determinations.

3. Surface Water and Sediment Contamination

Respondent shall conduct a surface water and sediment investigation to characterize contamination, if any, that may be in surface-water bodies resulting from contaminant releases at the facility. The investigation shall include, but not be limited to, the following information:

- a. Determine if offsite migration of contaminated surface sediments has occurred.
- b. Determine if contaminants are entering the surface waters adjacent to the site.

4. Subsurface Soils Contamination and Soil Gases

Respondent shall investigate soil contamination, if any, and the presence of soil gas. The investigation shall include the following:

- a. Identify soil contamination areas, if any, for further investigation using direct sampling as identified in item #2 above.
- b. Calculate the potential, if any, for soil vapor migration to the ground surface and the atmosphere.

D. Potential Receptor Identification

Respondent shall collect data as needed on potentially impacted populations consistent with appropriate guidance documents. The following characteristics shall be identified:

- 1. Local uses and possible future uses of groundwater:
 - a. Type of use (e.g., drinking water source, municipal, residential, agricultural, domestic/nonpotable, and industrial).

- b. Locations of groundwater users, including wells and discharge areas.
- 2. Local uses and possible future uses of surface water draining from the facility:
 - a. Domestic and municipal (e.g., potable, lawn/gardening watering)
 - b. Recreational (e.g., swimming, fishing)
 - c. Agricultural
 - d. Industrial
 - e. Environmental (e.g., fish and wildlife propagation)
- 3. Human use of or access to the facility and immediately adjacent lands including:
 - a. Recreation
 - b. Agriculture
 - c. Residential
 - d. Commercial
 - e. Zoning
- 4. A description of the biological community in surface water adjacent to or potentially affected by the facility will be performed if chemical analysis indicate the need for this evaluation.

TASK V: INVESTIGATION ANALYSIS

Respondent shall prepare an analysis and summary of all facility investigations and their results. The objective of this task shall be to ensure that the investigation data are sufficient in quality (e.g., quality assurance procedures have been followed) and quantity to describe the nature and extent of contamination, if any, potential threat to human health and the environment, if any, and to support the Corrective Measures Study.

A. Data Analysis

Respondent shall analyze all facility investigation data outlined in Task IV and prepare a report on the type and extent of contamination, if any, at the facility, including sources and migration pathways. The report shall describe the extent of contamination, if any, (qualitative/quantitative) in relation to the background levels for the area.

B. Protection Standards

1. Groundwater Protection Standards

Respondent shall provide information to support the Agency's selection/development of Groundwater Protection Standards for all hazardous constituents found in the groundwater during the Facility Investigation (Task IV).

- a. The Groundwater Protection Standards shall consist of:
 - i. For any constituents listed in Table 1 of 40 CFR 264.94, the respective value given in that table (MCL) if the background level of the constituents is below the given in Table 1, or
 - ii. The background level of that constituent in the groundwater, or
 - iii. A U.S. EPA-approved Alternate Concentration Limit (ACL)
- b. Information to support the Agency's selection of Alternate Concentration Limits (ACLs) shall be developed by the Respondent in accordance with U.S. EPA guidance. For any proposed ACLs, U.S. EPA shall specify in writing the reason(s) for any disapproval or approval with modification.
- c. Within sixty (60) days of receipt of any proposed ACLs, the U.S. EPA shall notify Respondent in writing of approval, disapproval, or approval with modifications. The U.S. EPA shall specify in writing the reason(s) for any disapproval or approval with modification.
- d. Within thirty (30) days of receipt of the U.S. EPA's notification of disapproval of any proposed ACL, the Respondent shall amend and submit revisions to the U.S. EPA.

2. Other Relevant Protection Standards

Respondent shall identify all relevant and applicable state and Federal standards for the protection of human health and the environment to include standards for:

- a. Drinking water
- b. Ambient water quality
- c. Ambient air quality

TASK VI: REPORTS

Respondent shall submit to the U.S. EPA reports as delineated in the schedules contained in the Groundwater Assessment Plan for the EKCO Massillon Site and the RFI Workplan.

A. Draft and Final

Respondent shall prepare and submit 5 copies of the RCRA Facility Investigation Report. The RCRA Facility Investigation Report shall be developed in draft form for U.S. EPA review. The RCRA Facility Investigation Report shall be finalized incorporating comments received on the Draft RCRA Facility Investigation Report from U.S. EPA to the extent required by this Consent Decree.

B. Progress

Monthly progress reports shall be submitted to U.S. EPA by the 20th of each month. The monthly progress report will at a minimum include:

1. A detailed summary of work completed during the previous month;
2. A description of problems encountered during the previous month;
3. A description of problem resolution from previous reports;
4. A schedule of planned activities for the coming month.

ATTACHMENT III

SCOPE OF WORK FOR A CORRECTIVE MEASURES STUDY AT EKCO HOUSEWARES, INC.

PURPOSE

The purpose of this Corrective Measures Study (CMS) is to develop and evaluate the corrective action alternative(s) and to recommend the corrective measure or measures, if any, which may be taken at EKCO Housewares, Inc.. The CMS may support the continuation of the existing remedial activities as the Corrective Measure Program for the site. Respondent will furnish the personnel, materials, and services necessary to prepare the corrective measures study, except as otherwise specified.

SCOPE

The Corrective Measure Study consists of five tasks:

TASK VII: IDENTIFICATION AND DEVELOPMENT OF THE CORRECTIVE MEASURE ALTERNATIVE(S)

- A. Description of Current Situation
- B. Establishment of Corrective Action Objectives
- C. Screening of Corrective Measures Technologies
- D. Identification of the Corrective Measure Alternative(s)

TASK VIII: LABORATORY AND BENCH-SCALE STUDIES (IF NECESSARY)

TASK IX: EVALUATION OF THE CORRECTIVE MEASURES ALTERNATIVE(S)

- A. Technical/Environmental/Human Health Institutional
- B. Cost Estimates

TASK X: RECOMMENDATION OF THE CORRECTIVE MEASURE(S) ALTERNATIVE(S)

- A. Technical
- B. Environmental
- C. Human Health

TASK XI: REPORTS

- A. Progress (monthly)
- B. Draft
- C. Final

TASK VII: IDENTIFICATION AND DEVELOPMENT OF THE CORRECTIVE MEASURE
ALTERNATIVE(S)

Based upon the results of the RCRA Facility Investigation and consideration of the identified Preliminary Corrective Measure Technologies (Task II), Respondent shall identify, screen, and develop the alternative(s) for removal, containment, treatment, and/or other remediation of the contamination based on the objectives established for the corrective action.

A. Description of Current Situation

Respondent shall submit an update to the information describing the current situation at the facility and the known nature and extent of the contamination, if any, as documented by the RCRA Facility Investigation Report. Respondent shall provide an update to the information presented in Task I of the RFI to the Agency regarding previous response activities and any interim measures that have or are being implemented at the facility. Respondent shall also make a facility-specific statement of the purpose for the response based on the results of the RCRA Facility Investigation. The statement of purpose should identify the actual or potential exposure pathways that should be addressed by corrective measures.

B. Establishment of Corrective Action Objectives

Respondent shall recommend to U.S. EPA site-specific objectives for the corrective action needed to protect human health and the environment. These objectives shall be based on public health and environmental criteria, information gathered during the RCRA Facility Investigation, final applicable U.S. EPA guidance supplied to Respondent, and applicable requirements of Federal statutes. All corrective actions concerning groundwater releases must be consistent with, and as stringent as, those required under 40 CFR 264.101.

C. Screening of Corrective Measure Technologies

Respondent shall review the results of the RCRA Facility Investigation and reassess the technologies specified in Task II to identify any additional technologies that are applicable at the facility. Respondent shall screen the preliminary corrective measure technologies identified in Task II of the RCRA Facility Investigation and any supplemental technologies to eliminate those that may not prove feasible to implement, that rely on technologies unlikely to perform satisfactorily or reliably, or that do not achieve the corrective measure objective within a reasonable period of time achieve the corrective measure period that is environmentally protective and cost-effective. This screening process focuses on eliminating those technologies that have several limitations for a given set of waste- and site-specific conditions. The screening step may also eliminate technologies based on commercial availability of technologies and the inherent technology limitations.

Site, waste, and technology characteristics that are used to screen inapplicable technologies are described in more detail below:

1. Site Characteristics

Site data should be reviewed to identify conditions that may limit or promote the use of certain technologies. Technologies whose use is clearly precluded by site characteristics should be eliminated from further consideration.

2. Waste Characteristics

Identification of waste characteristics that limit the effectiveness or feasibility of technologies is an important part of the screening process. Technologies clearly limited by these waste characteristics should be eliminated from consideration. Waste characteristics particularly effect the feasibility of in situ methods, direct treatment methods, and land disposal (on/offsite).

3. Technology Limitations

During the screening process, the level of technology development, commercial availability, performance record, and inherent construction, operation, and maintenance problems should be identified for each technology considered. Technologies that are unreliable, perform poorly, or are not fully demonstrated may be eliminated in the screening process. For example, certain treatment methods have been developed to a point where they can be implemented in the field without extensive technology transfer or development.

D. Identification of the Corrective Measure Alternative or Alternatives

Respondent shall develop the corrective measure alternative(s) based on the corrective action objectives and analysis of Preliminary Corrective Measures Technologies, as presented in Task II of the RCRA Facility Investigation, and as supplemented following the preparation of the RFI Report. These may include a no-action alternative. The Respondent shall rely on sound engineering practices to determine which of the previously identified alternatives appear most suitable for the site. Technologies can be combined to form an overall corrective measure alternative. The alternatives developed should represent a workable number of option(s) that appear to adequately address all site problems and corrective action objectives. Alternatives may consist of an individual technology or a combination of technologies. Respondent shall document the reasons for excluding technologies identified in Task II, as supplemented.

TASK VIII: LABORATORY AND BENCH-SCALE STUDIES

If the U.S. EPA determines upon conferring with Respondent that it is appropriate, Respondent shall conduct laboratory and/or bench-scale studies to determine the applicability of corrective measure technology(ies) to facility conditions. Respondent shall analyze the technologies based on literature review, vendor contacts, and past experience to determine the testing requirements.

Respondent shall develop a testing plan identifying the type(s) and goal(s) of the study(ies), the levels of effort needed, and the procedures to be used for data management and interpretation.

Upon completion of the testing, Respondent shall evaluate the testing results to assess the technology(ies) with respect to the site-specific questions identified in the test plan.

Respondent shall prepare a report summarizing the testing program and its results, both positive and negative.

The Respondent shall submit a report delineating the procedures, analyses, and results of any laboratory or bench-scale studies as performed.

TASK IX: EVALUATION OF THE CORRECTIVE MEASURE ALTERNATIVE(S)

Respondent shall describe each corrective measure alternative that passes through the Initial Screening in Task VIII and evaluate each corrective measure alternative and its components. The evaluation shall be based on technical, environmental, human health, and institutional concerns. Respondent shall also develop cost estimates for each corrective alternative.

A. Technical/Environmental/Human Health/Institutional

Respondent shall provide a description of each corrective measure alternative that will include the following: preliminary process flow sheets; preliminary sizing and types of construction for buildings and structures; and rough quantities of utilities required. Respondent shall evaluate each alternative in the following four areas:

1. Technical

Respondent shall evaluate each corrective measure alternative based on performance reliability, implementability, and safety.

a. Respondent shall evaluate performance based on the effectiveness and useful life of the corrective measure:

- i) Effectiveness shall be evaluated in terms of the ability to perform intended functions such as containment, diversion, removal, destruction, or treatment. The effectiveness of each corrective measure shall be determined either through design specifications or by performance evaluation. Any specific waste or site characteristic that could potentially impede effectiveness shall be considered. The evaluation should also consider the effectiveness of combinations of technologies; and
- ii) Useful life is defined as the length of time the level of effectiveness can be maintained. Most corrective measure technologies, with the exception of destruction, deteriorate with time. Often, deterioration can be slowed through proper system operation and maintenance, but the

technology eventually may require replacement. Each corrective measure shall be evaluated in terms of the projected service lives of its component technologies, as well as appropriateness of the technologies.

- b. Respondent shall provide information on the reliability of each corrective measure alternative to meet the corrective action objectives, including its operation and maintenance requirements and their demonstrated reliability.
- c. The Respondent shall describe the implementability of each corrective measure, including the relative ease of installation (constructability) and the time required to achieve the corrective action objectives.

2. Environmental

The Respondent shall perform an Environmental Assessment for each alternative. The Environmental Assessment shall focus on the facility conditions and pathways of contamination actually addressed by each alternative. The Environmental Assessment for each alternative will include an evaluation of: the short and long-term beneficial and adverse effects of the response alternative; any adverse effects on environmentally sensitive areas; and an analysis of measures to mitigate adverse effects.

3. Human Health

Respondent shall assess each alternative in terms of the extent to which it mitigates short and long-term potential exposure to any residual contamination and how it protects human health both during and after implementation of the corrective measure. The assessment will describe the levels and characterizations of contaminants onsite, potential exposure routes, and the potentially affected population. Each alternative will be evaluated to determine the level of exposure to contaminants and the reduction over time. For management of mitigation measures, the relative reduction of impact will be determined by comparing residual levels of each alternative with existing criteria, standards, or guidelines acceptable to U.S. EPA.

4. Institutional

Respondent shall assess relevant institutional needs or limitations for each alternative, specifically the effects of Federal, state, and local environmental and public health statutes, standards, regulations, final guidance, or ordinances.

B. Cost Estimate

The Respondent shall develop an estimate of the cost for each corrective measure alternative and for each phase or segment of the alternative. The cost estimate shall include capital, operation, and maintenance costs.

1. Capital costs consist of direct (construction) and indirect (nonconstruction and overhead) costs.
 - a. Direct capital costs include:
 - i. Construction costs: costs of materials, labor (including fringe benefits and workers compensation), and equipment required to install the corrective measure.
 - ii. Equipment costs: costs of treatment, containment, disposal and/or service equipment necessary to implement the action; these materials remain until the corrective action is complete;
 - iii. Land and site-development costs: expenses associated with purchase of land and development of existing property; and
 - iv. Buildings and services costs: costs of process and nonprocess buildings, utility connections, purchased services, and disposal costs.
 - b. Indirect capital costs include:
 - i. Engineering expenses: costs of administration, design, construction supervision, drafting, and testing of corrective measure alternatives;
 - ii. Legal fees and license or permit costs: administrative and technical costs necessary to obtain licenses and permits for installation and operation.
 - iii. Startup and shakedown costs: costs incurred during corrective measure startup; and
 - iv. Contingency allowances: funds to cover costs resulting from unforeseen circumstances, such as adverse weather conditions, strikes, and inadequate facility characterization.
2. Operation and maintenance costs are post-construction costs necessary to ensure continued effectiveness of a corrective measure. The Respondent shall consider the following operation and maintenance cost components:
 - a. Operating labor costs; wages, salaries, training, overhead, and fringe benefits associated with the labor needed for post construction operations;
 - b. Maintenance materials and labor costs: costs for labor, parts, and other resources required for routine maintenance of facilities and equipment;

- c. Auxiliary materials and energy: costs of such items as chemicals and electricity for treatment plant operations, water and sewer service, and fuel;
- d. Purchased services: sampling costs, laboratory fees, and professional fees for which the need can be predicted;
- e. Disposal and treatment costs: costs of transporting, treating, and disposing of waste materials, such as treatment plant residues, generated during operations;
- f. Administrative costs: costs associated with administration of corrective measure operation and maintenance not included under other categories;
- g. Insurance, taxes, and licensing costs: costs of such items as liability and sudden accidental insurance; real estate taxes on purchased land or rights-of-way; licensing fees for certain technologies; and permit renewal and reporting costs;
- h. Maintenance reserve and contingency funds: annual payments into escrow funds to cover (1) costs of anticipated replacement or rebuilding of equipment, and (2) any large unanticipated operation and maintenance costs; and
- i. Other costs: items that do not fit any of the above categories.

TASK X: RECOMMENDATION OF THE CORRECTIVE MEASURE OR MEASURES

Respondent shall recommend and justify a corrective measure alternative using technical, human health, and environmental criteria.

This recommendation shall include summary/tables that allow the alternative(s) to be easily understood. Trade-offs among health risks, environmental effects, and other pertinent factors shall be highlighted. As a minimum, the following criteria will be used to justify the final corrective measure(s).

A. Technical

- 1. Performance - corrective measure(s) that are most effective at performing their intended functions and maintaining the performance over extended periods of time will be given preference.
- 2. Reliability - corrective measure(s) that do not require frequent or complex operation and maintenance activities, and that have proven effective under waste and facility conditions similar to those anticipated will be given preference.
- 3. Implementability - corrective measure(s) that can be constructed and operated to reduce levels of contamination to attain or exceed

applicable standards in the shortest period of time will be preferred.

4. Safety - corrective measure(s) that pose the least threat to the safety of nearby residents and environments, as well as workers during implementation will be preferred.

B. Human Health

The corrective measure(s) must comply with existing promulgated U.S. EPA criteria, standards, and guidelines for the protection of human health. Corrective measures that provide the minimum level of exposure to contaminants and the maximum reduction in exposure with time to identified actual human receptors will be considered preferable.

C. Environmental

The corrective measure alternative posing the least adverse impact or greatest improvement over the shortest period of time to the environment will be favored.

TASK XI: REPORTS

Respondent shall prepare a Corrective Measures Study Report presenting the results of Task VIII through X and recommending a corrective measure alternative.

A. Progress

The Permittee shall, at a minimum, provide the EPA with signed monthly progress reports containing the items listed below, as necessary:

1. A description and estimate of the percentage of the CMS completed;
2. Summaries of all findings;
3. Summaries of all changes made in the CMS during the reporting period;
4. Summaries of all contacts with the public regarding the CMS;
5. Actions being taken to rectify problems;
6. Changes in personnel during the reporting period;
7. Projected work for the next reporting period.

B. Draft

The Report shall include:

1. A description of the facility including a site topographic map and preliminary layouts.



1 WESTON WAY
WEST CHESTER, PA 19380-1499
215-692-3030 • FAX: 215-430-7296

17 September 1993

Ms. Karen Nesbit
Ohio Environmental Protection Agency
Northeast District Office
2110 East Aurora Road
Twinsburg, OH 44087

Subject: Modifications To RCRA Closure Plan For Ekco Housewares, Inc. Massillon,
Ohio

Dear Ms. Nesbit:

Based on the teleconference with you and Monty Sulieman of the Central District Office, Roy F. Weston, Inc. is sending the attached Modifications. These Modifications incorporate the following concerns raised by Ohio EPA:

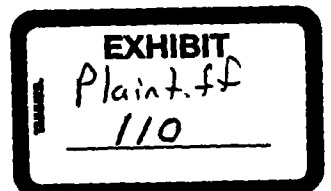
- the extent of the trenches used to confirm adequate mixing.
- the requirements for water during the stabilization step.
- the steps taken to prevent cross-contamination between grids.
- documentation of whether specific grids are stabilized in one lift or in two.

If you have any questions please contact Patricia McDonald of American Home Products Corporation at (212) 878-5590 or Tim Farrell of WESTON at (216) 832-1348.

Sincerely yours,

ROY F. WESTON, INC.


Timothy M. Farrell
Associate Engineer



Attachment

cc: M. Sulieman - CEDO
P. McDonald - AHP
V. Velez - WESTON
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OHIO EPA NEDO

**Modifications to RCRA Closure Plan For EKCO Housewares, Inc.
Massillon, Ohio**

Section 4.4 METHOD OF CLOSURE

The second bulleted item will be revised as follows:

- Stabilize material within the base of the lagoon to a depth of 4 ft.

Section 4.4.1.3 ON-SITE STABILIZATION

Page 4-8 will be revised as follows:

After the site has been prepared, ENRECO will begin stabilizing the waste with the ENRECO Injector system, an in-situ technology. The ENRECO system will be used to incorporate reagents with contaminated soils.

The Injector consists of four parallel vertical tubes, 5 feet in length, through which the reagent, portland cement, is conveyed by air pressure from a pneumatic truck through a 4-inch hose. A manifold divides the flow into four, 3-inch hoses, one attached to each tube of the Injector. The manifold and the Injector are mounted to replace the bucket on an excavator. As the portland cement flows through the tubes, the operator will rake the Injector in a back and forth manner to mix and homogenize the reagent with the waste. The mixing action occurs due to both the physical raking of the Injector and the release of the pneumatic pressure. The ends of the tubes are protected to prevent the underlying soils from obstructing the flow of the reagent. By repeatedly raking the material, it is assured that the reagent and the soil are thoroughly mixed together. The operator will visually observe the area being worked to verify that the reagent and the material are adequately mixed. If necessary, this raking process will continue after all the reagent has been added. Within each grid, three trenches will be opened to a depth of 4 feet and a length of 8 feet to confirm through visual observation that mixing is complete. The area of processed waste is readily recognizable from adjacent areas by physical appearance (texture and color).

The stabilization reaction requires water to proceed. Moisture present in the soil is usually sufficient for the reaction. Confirmation of the reaction is evidenced by a change in physical appearance. If there is not sufficient water for the reaction, the change in physical appearance will not be evidenced. If necessary, water will be added and incorporated into the waste/reagent mixture.

ENRECO will stabilize the lagoon in approximately 50 ft by 50 ft grids, as shown in Figure 4-1. Treatment will begin in grid 1 with the Injector resting on top of the untreated waste. As treatment progresses, the Injector will be moved so as to remain on untreated

material to prevent any possibility of cross contamination from untreated waste. Each grid will be stabilized to a depth of 4 ft. Following treatment of the material within a grid, the Injector will proceed to the next grid and commence treatment. The material will be left in place following treatment until it is confirmed that the material has been rendered non-hazardous. The order in which the grids will be treated is presented in Figure 4-1.

After treatment is completed, 3 days are needed to allow the material time to cure sufficiently to be render non-hazardous. Once the material is stabilized, TCLP testing will be performed to confirm that the stabilized material is non-hazardous.

Sampling requirements are presented in Subsection 4.4.1.4.1. The stabilized material will then be removed and sent off-site to the selected solid waste disposal facility.

If conditions within a specific grid are such that adequate mixing and treatment to a depth of 4 ft is not possible in one lift, as evidenced by the inability of the Injector to properly penetrate the waste, then the following adjustment will be made. The area will be treated to the greatest depth possible (up to 4 ft). Based on the available information, it is expected that at least 2 ft of material can be treated. Following treatment, samples will be collected from the first 2 ft. TCLP testing will be performed to confirm that the stabilized material is non-hazardous and can be removed. Stabilization will then be performed on the next 2 ft of material in the same manner, thereby ensuring that the full 4 ft of material within that grid is sufficiently treated. The specific treatment approach, whether treated in one lift or two lifts, will be recorded as part of the closure documentation, as described in Subsection 4.8.

Section 4.4.1.4.1 VERIFICATION OF TREATMENT

- This Subsection will be revised to indicate that samples will be collected from each grid, approximately every 400 yd³; rather than every 500 yd³:

Following stabilization, three samples from each grid area of stabilized material will be collected by the QA/QC technician, placed in individual 2-inch plastic cubes molds and covered to prevent air drying. Once the material has cured, it will be tested with a pocket penetrometer to ensure the compressive strength requirements are being achieved. The material will also be tested for density. If the first sample from a given grid is found to meet the strength criteria, then that batch will be considered suitable by the ENRECO QA/QC technician. Should the first sample fail, the second and third samples will be tested. If both the second and the third samples pass, the first sample will be disregarded. However, should either the second or the third sample also fail, the area will be declared unfit, and steps to strengthen that area, such as adding more reagent, will be taken.

After testing the treated samples for strength and density, the QA/QC technician will combine the three samples from each grid area. The composite sample will be extracted according to TCLP (EPA Method 1311) to ensure the leachate meets D006 (cadmium) requirements. Material that does not meet these requirements will be retreated according to the procedures specified in Subsection 4.4.1.3.

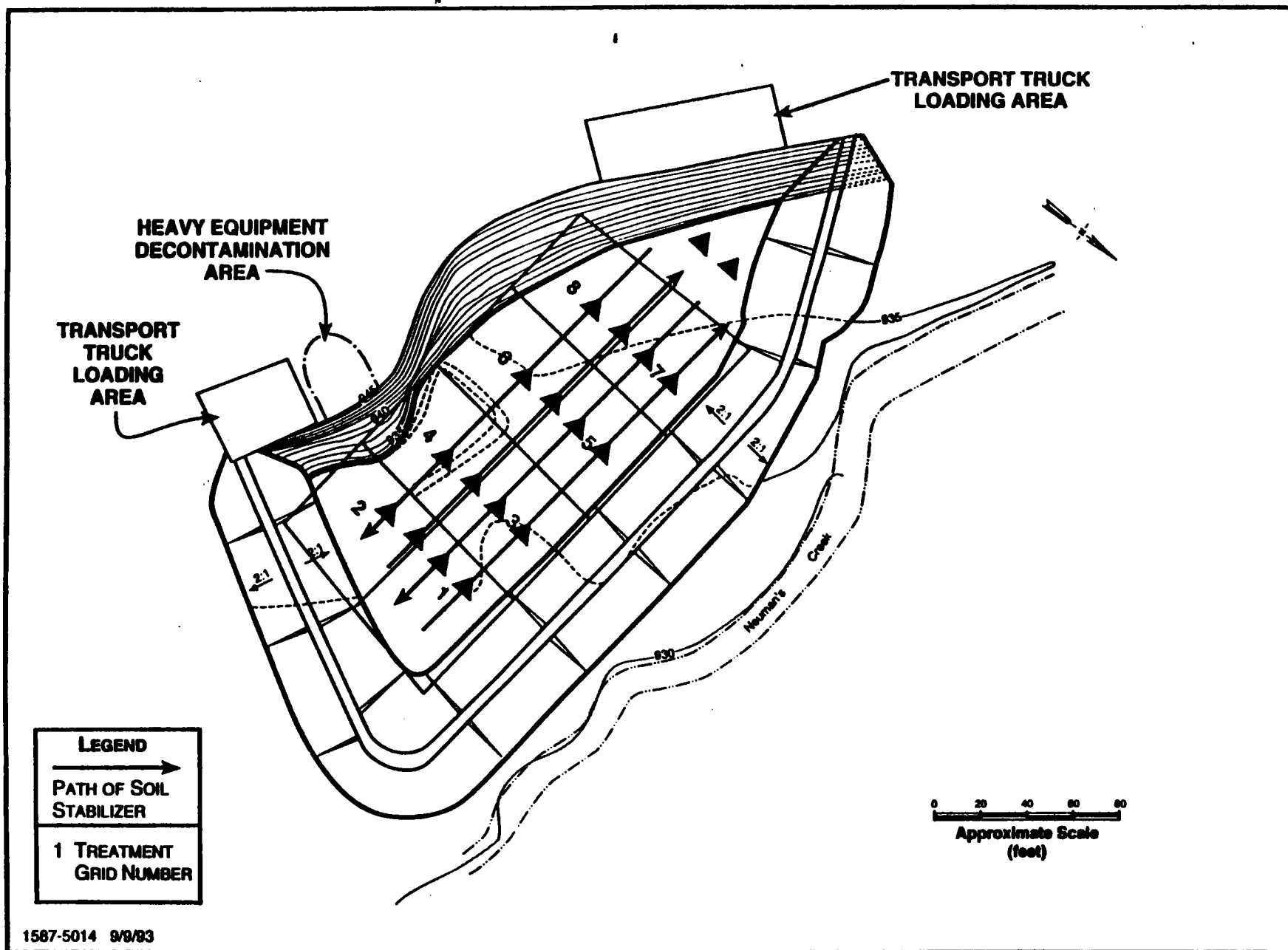


FIGURE 4-1 SOIL STABILIZER PATH WITH TREATMENT GRID

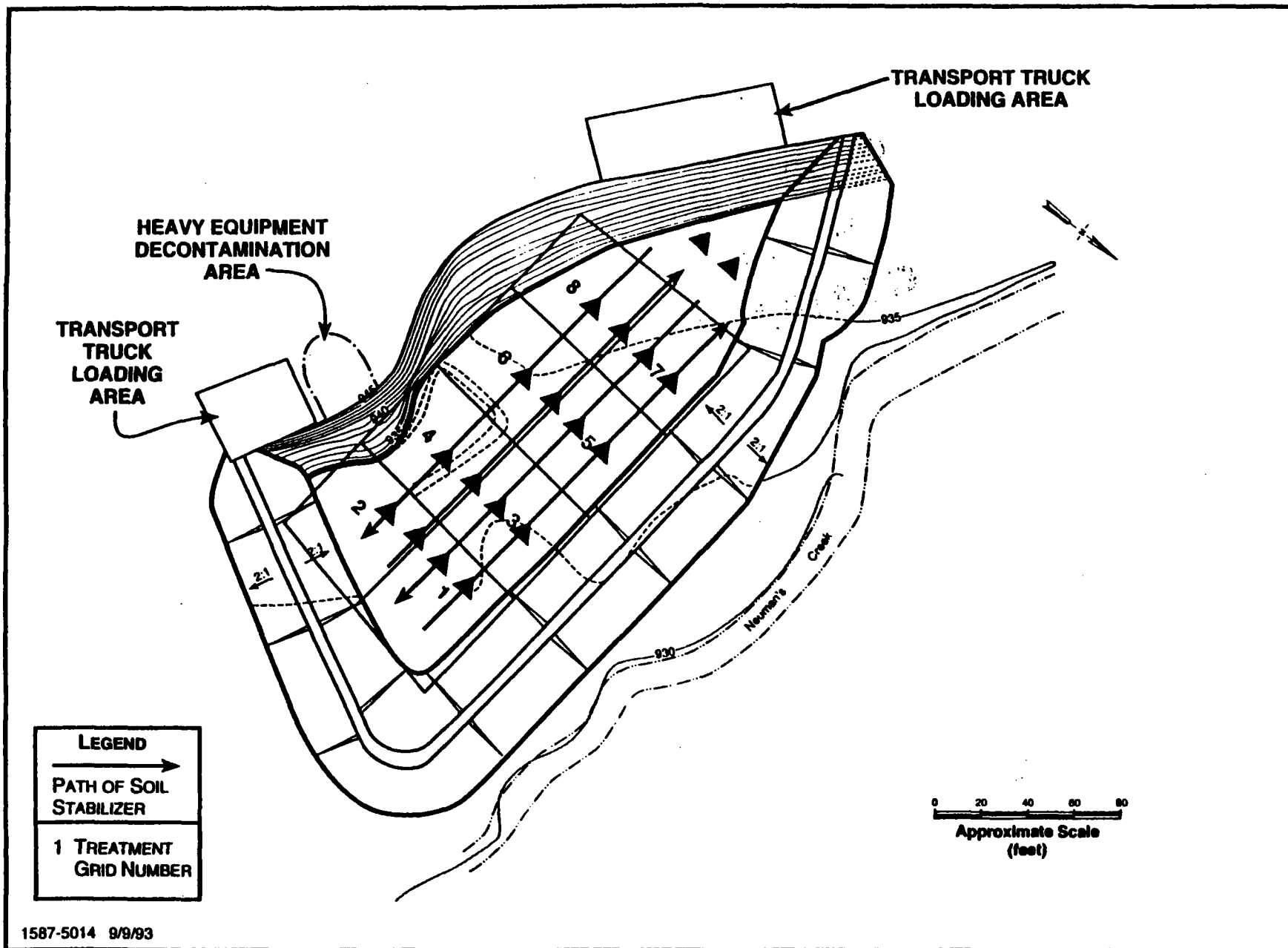


FIGURE 4-1 SOIL STABILIZER PATH WITH TREATMENT GRID



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RCRA EXPOSURE INFORMATION REPORT
FOR THE EKCO HOUSEWARES SITE, MASSILLON, OHIO

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1349E





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SECTION 1

INTRODUCTION

1.1 PURPOSE

The purpose of this document is to evaluate the exposure potential of employees and the surrounding population to chemical constituents associated with the ECKO Housewares site in Massillon, Ohio. This evaluation is not intended to be quantitative in nature. Rather, it will qualitatively assess possible contaminant sources and/or migration pathways, likely receptor populations, potential contaminant/receptor contact locations, and pertinent routes or mechanisms of exposure (e.g., oral, dermal, or inhalation). Possible health risks will be discussed, but again, only in qualitative terms of relative likelihood. Such risks will not be quantified in terms of a hazard index for noncarcinogenic risks or excess lifetime risks of cancer as this is beyond the scope of an Exposure Information Requirements report.

Much of the information for this exposure assessment was taken directly from the Draft RCRA Closure Plan for EXCO Housewares, Inc., Massillon, Ohio, Volume I, August 1988 (Closure Plan, 1988). Other information was obtained from the Draft Ground Water Assessment Plan (1988) and the Interim Measures Report (1987). These reports contain more detailed information concerning many of the subjects discussed herein.



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1.2 SITE LOCATION

The ECKO Housewares manufacturing facility is located at 359 State Avenue Extension N.W., Massillon, Ohio, 44648 on approximately 13 acres of land in an urban, industrialized area (Closure Plan, 1988). The site is 500 feet north of State Avenue Extension and 1,500 feet west of the Tuscarawas River in Northeast Massillon, Stark County, Ohio. Further details are available in the Closure Plan (1988). Figure 1 provides a map of the plant site in relation to local Massillon geography.

1.3 SITE HISTORY

At the site production of aluminum cookware began in 1945 and stainless ware in 1946. For a brief time during the Korean War, 90 and 105 mm shell casings were manufactured for the government. Currently, metal cooking utensils are produced 24 hours a day, 5 days a week, by a crew of 350 people resulting in an annual production of approximately 26 million utensils per year.

Due to the military production in the early 1950s, two production wells were installed (W-1 and W-2). In 1953, a sewer was constructed to discharge waste streams directly into Newman Creek. Concurrently, an evaporation lagoon was constructed to receive sludge from waste streams resulting from military production. In 1954, electroplating operations began that permitted the copper coating of utensils produced at the facility. This resulted in the use of trichloroethylene (TCE) and trichloroethane (TCA) in order to clean utensiles prior to coating. TCE was used until the mid-1960s.

WESTON

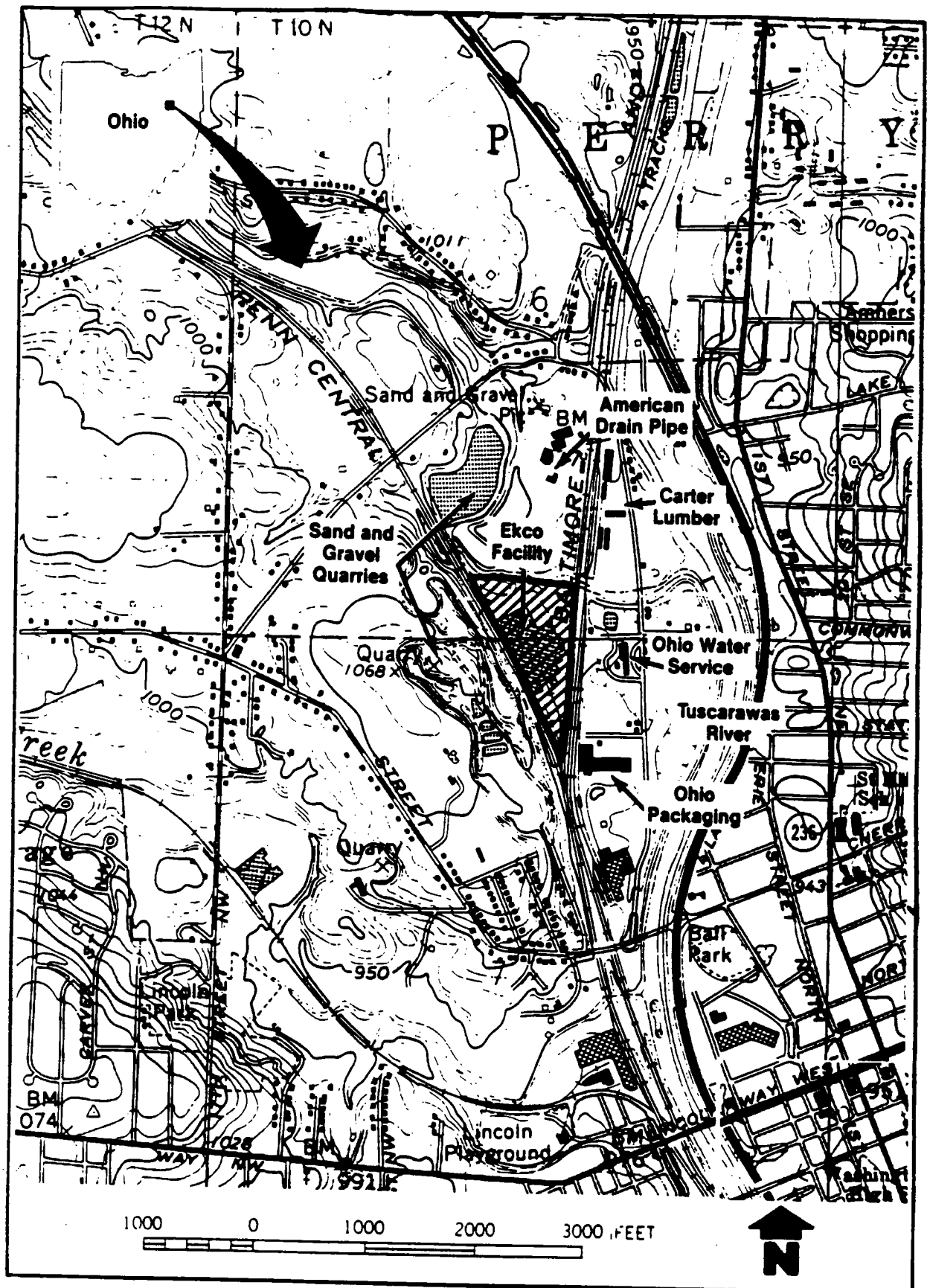


FIGURE 1 SITE LOCATION MAP
EKCO HOUSEWARES, INC., MASSILLON, OHIO
 (Ref. 7.5 Minute Massillon Quad, Ohio, 1978)



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In 1967, porcelain and teflon coating units were installed at the facility, and discharge of resulting wastestreams into the evaporation lagoon was approved by Ohio permit in 1969. Wastes included hydrochloric acid and sodium hydroxide from deionization units and copper plating operations; aluminum, coloring inorganics, lead, cadmium, selenium, cobalt, and toluene from porcelain-teflon coated aluminum ware; and alkaline washer fluids to clean aluminum products.

Production of aluminum and porcelain cookware was discontinued during the 1970s, and lagoon use ceased in 1977. Copper plating operations ended in 1978 at which time the primary utensils produced at the site were pressed and coated nonstick bakeware. In 1979/80, correspondence from EKCO to the Ohio EPA reported the occurrence of a solvent spill. The precise location and extent of the spill is unknown, but the spill was generally within the vicinity of process water well W-10.

Use of the lagoon was resumed in 1980. It received housing degreaser filter water until mid-1984, and the lagoon was finally decommissioned in December 1985.

Monitoring was undertaken in 1984 as part of an NPDES permitting process. These analyses revealed the presence of TCE and TCA in groundwater under the plant site.

1.4 GEOLOGY

A geological description of the site is contained in the Draft RCRA Closure Plan (1988). Briefly, the site resides on glacial drifts, ranging in depth from 25 to 100 feet, which overlies sands and gravels that comprised the pre-glacial surface. In



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the immediate vicinity, these drifts reach depths exceeding 250 feet, covering an ancient, pre-glacial valley. Newman Creek, located to the northeast of the site, runs over the valley. Sandstone and shale form the bedrock beneath the site. The reader is referred to the Closure Plan for further detail.

1.5 WASTE STREAMS

Waste streams and production chemicals are described in the Closure Plan (1988). In the past, waste streams consisting of trichloroethylenes and trichloroethanes, among others, were used to wash aluminum and stainless steel cookware prior to electroplating. Metals, contained in largely aqueous streams, include cadmium, chromium, and lead. Other wastes include silicone wastes and used oils. Hydrochloric acid and alkali wastestreams were also discharged. All streams were discharged into an evaporation lagoon except for noncontact cooling water, which is discharged directly into Newman Creek.

Currently, all hazardous wastes are placed in 55-gallon containers and transported offsite for proper disposal.

1.6 CLOSURE PLAN

The procedure for lagoon closure is described in the Closure Plan (1988). Briefly, stabilization consists of solidifying the wastes (sludges) that results in lower water permeability and, consequently, lower contaminant mobility. The lagoon will also be graded and capped with clay and synthetic liners, further reducing contaminant mobility. Grading will facilitate runoff while maintaining vegetative cover, and the cover system barriers will minimize infiltration from precipitation.



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SECTION 2

GENERAL INFORMATION

2.1 GROUNDWATER HYDROGEOLOGY

Groundwater exists in both the glacial drifts and bedrock with a head difference of 15 to 25 feet on the site. The bedrock wells produce yields ranging from 25 to 100 gallons per minute (gpm), while the municipal alluvial wells have yielded as much as 2,000 gpm. The alluvial aquifer flows in a direction parallel to Newman Creek, in a east-southeasterly direction toward the Tuscarawas River, less than 1 mile east.

Further hydrogeological details are available in the Closure Plan (1988).

2.2 SURFACE HYDROLOGY

Newman Creek flows over the pre-glacial valley in a easterly direction just north of the plant site toward the Tuscarawas River, which flows south less than 2,000 feet east of the plant. A lagoon that was used for wastewater streams in the past exists on the site. The lagoon is located approximately 250 feet north of the plant (just west of the buried pre-glacial valley) and is 260 by 95 feet in dimension with a surface area of approximately 20,000 square feet. The longitudinal axis of the lagoon parallels Newman Creek, and a berm surrounds the lower elevation of the lagoon preventing runoff into the creek.



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In the past, the lagoon received waste streams from the plant that contained heavy metals, chlorinated solvents, and nonhalogenated solvents. The lagoon dissipated excess water via evaporation with no direct discharge to local surface water bodies. The lagoon is no longer used for discharges. EPA Region V has declared the lagoon a hazardous waste surface impoundment. No waste streams are currently discharged into the lagoon, and existing water, if present, is the result of rainfall.

Currently, waste streams are placed in barrels and transported offsite by truck to a hazardous materials waste site. Noncontact cooling water is discharged directly to Newman Creek. This water is derived from the two onsite groundwater production wells equipped with scrubbers to remove volatile organics that are initially present at concentrations ranging between 0.02 and 0.86 parts per million (ppm). Discharged cooling water is periodically monitored and contains negligible volatile organics.

2.3 REGIONAL WATER USES

Regional water uses in the vicinity of the EKCO facility include recreational uses for surface water and potable water uses from groundwaters. The surface water body near the site is Newman Creek. The surface impoundment is located adjacent to Newman Creek, which flows approximately 1,500 feet east to the Tuscarawas River. The Tuscarawas River is used for recreational purposes. The City of Massillon relies on groundwater for a potable water supply. The Ohio Water Service Company supplies the majority of potable water to area residents. However, as noted in the Interim Measures Report (Revised February 1988),



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some areas west and northwest of the facility may have private water wells. Also, several production wells are located within 1 mile of the EKCO site. The Ohio Water Service water wells are located in the unconsolidated formation in the Tuscarawas River Valley. The depths and locations of the privately owned water wells are not known.

2.4 METEOROLOGY

Annual precipitation in the area is 35.90 inches/year based on 30 years of recordings by the Akron Canton Weather Service Office. Class A pan evaporation is approximately 40 inches/year as interpreted from a map in the Weather Bureau Technical Paper No. 37. A major rainfall event (25 year/24 hour), is 4 inches as listed in the Weather Bureau Technical Paper No. 40 for Stark County, Ohio.



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SECTION 3

CONTAMINANTS OF CONCERN

Contaminants of concern have been identified in the Closure Plan (1988) and include halogenated hydrocarbons, heavy metals, and a nonhalogenated solvent. The contaminants of concern are listed below.

Heavy Metals

cadmium
chromium
lead

Chlorinated Organics

trichloroethylene (TCA)
trichloroethane (TCA)
dichloroethylene
dichloroethane
dichlorobenzene
vinyl chloride
methylene chloride

Nonhalogenated Solvents

2-butanone
(methyl ethyl ketone or MEK)



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SECTION 4

PATHWAY-SPECIFIC INFORMATION

4.1 GROUNDWATER

Approximately 50 domestic and 5 commercial wells tap the bedrock aquifer within a 1-mile radius of the site. Two of the production wells exist on the site with an approximate depth of 225 feet. Six municipal wells tap the deep drift (approximately 150 feet) of the pre-glacial valley located 2,500 feet east and northeast of the site. The alluvial aquifer in which the municipal wells are located travels parallel to Newman Creek. The direction of the deeper bedrock aquifer is obscured because of the pumping of onsite production wells, which affects the gradient direction in the vicinity of the plant. How this may affect the migration of contaminants that may have leached from the lagoon area into the shallower, alluvial aquifer is unknown at present. Volatiles that occur in the lagoon have been found in water from the onsite production wells. The production wells are equipped with strippers that remove volatile organics prior to the water's use in the plant and subsequent discharge to Newman Creek.

4.1.1 Current Analytical Monitoring Information

As mentioned previously, volatile organic compounds including TCE and TCA were found in groundwater beneath the plant site in wells D1, D2, D3, D4, and W-10. (See RCRA Closure Plan for well locations.) Elevated levels of benzene, dichloroethenes, and



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vinyl chloride were also found in several wells. The locations of these wells do not permit adequate delineation of the contaminant plume. Therefore, further monitoring is planned.

The sludge and soil sampling also has indicated cadmium, chromium, and lead occur at elevated concentrations at locations at the facility. Because these contaminants occur at marked concentrations in the lagoon sludges, it may be inferred that groundwater may carry them downgradient. However, groundwater quality analytical results have not indicated the metals above their maximum concentration limits specified by the Safe Drinking Water Act.

4.1.2 Planned Analytical Monitoring Information

In order to more precisely define the directions and dimensions of the groundwater contaminant plume, further groundwater monitoring is planned. Future monitoring and evaluation is detailed in the Groundwater Assessment Plan (1987).

4.1.3 Likely and Unlikely Groundwater Pathways

Drinking of contaminated groundwater by downgradient well users represents a potential contaminant pathway of concern. Other domestic uses of contaminated groundwater, such as bathing and laundering clothes, may represent other relevant mechanisms of exposure. In addition, groundwater may be used for irrigating crops and watering livestock; however, these uses are not considered likely due to the urban/industrialized location of the site.



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Recharge of groundwater-borne contaminants into Newman Creek is a concern. Information to date indicates that the hydraulic gradient flows away from Newman Creek toward the plant production well. Additional information will be acquired during the Groundwater Quality Assessment, which will better clarify whether recharge is occurring and whether this is influenced by the pumping from the production well (W-10).

Once the lagoon is stabilized and capped, leaching of contaminants to groundwater will be minimized since rainfall will not percolate through lagoon sludges and subsequently mobilize contaminants.

4.1.4 Potential Critical Groundwater Receptors

The receptors that may be exposed to lagoon-associated contaminants via the groundwater are downgradient potable water well users. These may consist of local residents with wells. Users of the municipal well supply are not considered at risk because periodic monitoring has not revealed the presence of the contaminants of concern above standards in the municipal wells.

4.2 SURFACE WATER

The lagoon is no longer in operation but still contains excessive levels of the contaminants of concern (i.e., metals). Of current concern via the surface water pathway is whether contaminants may be mobilized from the lagoon sludges by surface water runoff (perhaps after catastrophic failure of the berm). Once the lagoon is capped, this pathway will no longer pose a significant health threat.



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Because a berm prevents runoff from the evaporation lagoon to Newman Creek, neither this creek nor the Tascarawas River will receive contaminants from runoff in the immediate future. Therefore, no potential downstream receptors, such as swimmers and fish consumers, will be threatened by the surface water pathway. Moreover, the planned lagoon stabilization and capping procedures will significantly reduce the possibility of contaminant runoff in the future.

There may be potential for migration of constituents to Newman Creek and the Tuscarawas River via recharge of groundwater to these surface water bodies. Information will be collected to address this concern in the Ground Water Assessment Plan (1987).

4.3 AIR

Currently, only exposure from volatile organic compounds (VOCs) is likely since metals lack sufficient vapor pressure to volatilize. Potential VOC emissions from the sludges in the lagoon prior to closure would be expected to be very low and several orders of magnitude below the Threshold Limit Value (TLV) established by the American Council for Governmental Industrial Hygienists (ACGIH) for the specific chlorinated hydrocarbon solvents. Thus, it is not anticipated that the proximate population, the site workers, would be exposed to unacceptable VOC concentrations. It is possible that particulates from lagoon sludges might become airborne; however, currently the 10-foot berm that surrounds the lagoon inhibits such an exposure mechanism.



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It is possible that downwind receptors might breath contaminated sludge particles blown by the wind. Suspension may occur only during construction activities in and around the lagoon area. During such construction, exposure would be of a limited duration and could be minimized by wetting the soil before closure activities.

The planned stabilization and capping would completely prevent contaminant migration via the air pathway during the post-closure period since the waste material would be beneath a multilayer cap that will be more than 5 feet thick.

4.4 SUBSURFACE GAS

The potential for buildup of subsurface gases is considered negligible. This is because the concentrations of organics in soil borings were very low. Thus, soil microorganisms would not have sufficient carbon source for the buildup of significant metabolic products, such as methane.

4.5 SOIL

Currently, only select employees have direct contact with lagoon sludges since the fence surrounding the lagoon is secure. The public is excluded from access by a secured fence around the property. Thus, trespassers are not likely.

Regarding employees specifically, the planned solidification and capping of the lagoon will preclude direct contact of employees with contaminated sludges. Therefore, incidental oral ingestion, dermal absorption from skin contact, and breathing



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of resuspended contaminated sludge particles (see previous subsection) will not occur except perhaps during construction. Protective measures for workers during construction is described in the Health and Safety Plan.

For these reasons, direct contact with soils is not considered a likely contaminant exposure pathway.



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SECTION 5

POTENTIAL EXPOSURE PATHWAYS

As a result of the analysis presented in this report, it is concluded that the major migration pathway for contaminants within the ECKO lagoon is via the groundwater. The reasons for eliminating other migration pathways have already been given in the preceeding subsections.



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SECTION 6

POTENTIAL CRITICAL RECEPTORS

From the previous analysis, downgradient well users constitute potentially affected receptors. No other receptors appear to incur an exposure hazard at this time.



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SECTION 7

EXPOSURE POTENTIAL OF THE UNIT

7.1 POTENTIAL FOR HUMAN EXPOSURE VIA THE GROUNDWATER PATHWAY

As previously stated, groundwater is a pathway of concern, and downgradient well users constitute a population that may be at risk from contaminants leaching into groundwater from the EKCO site.

7.2 POTENTIAL FOR HUMAN EXPOSURE VIA THE SURFACE WATER PATHWAY

The surface water pathway does not appear to pose a significant threat to downstream water users.

7.3 POTENTIAL FOR HUMAN EXPOSURE VIA THE AIR PATHWAY

The air pathway does not appear to pose a significant threat to downstream water users.

7.4 POTENTIAL FOR HUMAN EXPOSURE VIA SUBSURFACE GAS RELEASES

The threat of explosion could occur only from the solvent and not from metals. The chlorinated solvents used on the site may present a combustion hazard in pure form (and prior to use in their commercial application). After entering the environment, however, the concentrations are sufficiently low that an imminent explosion hazard probably does not exist. Moreover, halogenated hydrocarbons usually only support combustion (i.e., are combustible but not flammable, according to the Department



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of Transportation). As to the possibility of methane buildup, contaminants do not appear to exist in sufficient concentrations to support a bacterial population that might result in the significant conversion to methane (i.e., there is not an adequate carbon source for methane buildup).



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SECTION 8

PATHWAYS OF CONCERN

The single pathway of concern is the groundwater, and the critical receptors are downgradient well users.



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SECTION 9

QUALITATIVE EXPOSURE ESTIMATES

The contaminants of concern that may affect downgradient users include not just the VOCs but also the metals that have shown some marginal ability to migrate from the lagoon via groundwater.



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SECTION 10

RISK POTENTIAL

It is estimated that, currently, the risk potential is low and that the stabilization and capping procedures planned for the lagoon would further reduce risks. This classification has been chosen because well monitoring reveals negligible, if any, contamination of residential or municipal well water.

Even though the site is old and contaminant migration has had ample time to have occurred, the potential for further contaminant migration via groundwater cannot be ruled out at this time.



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SECTION 11

DISCUSSION

Because the potential exists for further contaminant migration and because the beneficial influence of current pump and treat operations may revert if ever discontinued, the further planned groundwater quality assessment is appropriate. More precise delineation of the contaminant plume will support a more extensive evaluation of the possible health hazards posed by contaminants associated with the EKCO site.



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SECTION 12

RECOMMENDATIONS

It is recommended that the currently planned groundwater quality assessment proceed. After the results become available, possible health hazards should be re-examined with more certainty. Evaluation of sediments (as described in the Ground Water Assessment Plan, 1988) will also help to characterize whether contaminants might be present and pose a possible threat to downstream water users.